

## **PREGNANCY AND MATERNITY LEAVE DURING THE COVID-19 PANDEMIC**

The NASUWT is aware that there are a significant number of members who are pregnant or on maternity leave who will be concerned about the workplace, given the easing or withdrawal of various restrictions, coupled with the surge in cases of the coronavirus which is linked to the emergence of the Omicron variant.

In light of this, the Union has produced this advice and guidance to ensure that members who are pregnant or on maternity leave are aware of their rights and entitlements and supported during this time.

### **Your duties as a pregnant or new mother**

Throughout the process, it is important that you inform your employer of the fact that you are pregnant or breastfeeding and that you expect the school to support you in your request for an individual risk assessment.

You must co-operate with the employer, providing them with any information which will facilitate the provision of an individual risk assessment for you as a pregnant or new mother, which should be provided to you before you return to work.

### **The Health and Safety at Work (Northern Ireland) Order 1978**

The Health and Safety at Work (Northern Ireland) Order 1978 places a responsibility on all employers to ensure, as far as is reasonably practicable, the health and safety of all employees and non-employees in their workplace. This includes identifying and assessing risks to health and safety and steps to reduce or eliminate these risks, including for pregnant teachers and those who are breastfeeding. This applies to COVID-19 in the same way as it would to any other hazard.

The employer is required to consider whether they have taken 'reasonable steps', so far as reasonably practicable, if necessary by amending their health and safety policies, procedures and practices, to ensure that pregnant teachers or new mothers are not placed at a substantial disadvantage.

Indeed, advice and guidance from the Department of Education (DE) and the Education Authority (EA) emphasise the importance of conducting a risk assessment for those who are pregnant.

Under the **Management of Health and Safety at Work Regulations (Northern Ireland) 2000**, employers are required by law to produce an **individual risk assessment** for you if you are pregnant or a new mother, including clear plans which demonstrate that there will be compliance at all times with the measures identified to manage the overall risk of COVID-19, as well as those specific to you as a pregnant or a new mother.

This may require employers taking advice from other professionals on specific risks (e.g. medical professionals/occupational health) for pregnant teachers and those who are new mothers to best ensure your health and safety in the workplace.

The **Workplace Health, Safety and Welfare Regulations (Northern Ireland) 1993** provide additional protections for pregnant teachers and those who are new mothers as they require employers to provide suitable rest facilities for teachers who are pregnant or breastfeeding. These should be located in a suitable place (e.g. near toilets) and, if necessary, include appropriate facilities for teachers who are pregnant or new mothers to lie down.

## **‘Clinically vulnerable’/‘clinically extremely vulnerable’**

It is important that any risk assessment acknowledges and accounts for the fact that those who are pregnant should still be considered ‘clinically vulnerable’. In some cases, those who are pregnant may be classed as ‘clinically extremely vulnerable’ (CEV).

Those who are pregnant have an increased risk of becoming severely unwell if they contract COVID-19, because pregnancy can alter how the body handles severe viral infections, particularly in the third trimester.

Indeed, there is some evidence that pregnant women are at higher risk of hospitalisation and suffer more severe symptoms if they contract COVID-19, a situation that can be compounded if the individual is from a Black background, if they are over the age of 35, have a BMI index in excess of 30, and/or have pre-existing medical conditions, such as high blood pressure and diabetes.

The Union maintains that until more is known about the effects of the Omicron variant, all employers should permit pregnant women, of whatever gestation, to work from home. For some teachers who are pregnant, this may mean agreeing to a temporary redeployment to other duties that can be undertaken from home.

Where this is not feasible, or a pregnant teacher chooses to be in the workplace, the aforementioned advice and guidance advises that pregnant women at any period of gestation should not be required to continue working unless this is supported by an appropriate risk assessment. The same advice and guidance references the need to monitor and follow the information published by the Royal College of Obstetrics and Gynaecology (RCOG) as the basis for a risk assessment.

Advice from the DE advises that pregnant teachers who are clinically vulnerable should still take extra care in observing social distancing and should work from home whenever possible.

There is an expectation that schools follow the advice and guidance as part of any risk assessment. If this is not possible, then the time spent in close contact with others should be kept to a minimum.

The EA has produced a risk assessment template which schools and school leaders will need to be cognisant of and undertake with pregnant teachers.<sup>1</sup> This must be produced and any options fully discussed with you in advance of any return to work, and should be kept under review throughout your pregnancy/period of breastfeeding and as government advice and guidance changes.

The risk assessment template produced by the EA reinforces the need to give due consideration to whether adapting duties and/or facilitating home working is an appropriate mitigating factor.

Furthermore, it should be noted that this is predicated on the ability to minimise contact. If this is not possible, then the time spent in close contact with others should be kept to a minimum.

Those who are pregnant should therefore still take care to minimise contact with others from outside their household, as well as paying particular attention to social distancing measures and good hygiene, particularly in the third trimester and beyond.

Your employer should, as required by law, produce an individual risk assessment for you if you are pregnant or a new mother, including clear plans which demonstrate that there will be compliance at all times with the measures identified to manage the risk.

This may include, but is not limited to:

- adjusting your working conditions or hours of work, including:
  - providing arrangements for you to report to the school safely;

<sup>1</sup> <https://www.education-ni.gov.uk/publications/guidance-supporting-staff-return-schools> – appendix 2 COVID-19 Risk Assessment for pregnant staff.

- letting you sit down if your job involves standing;
- avoiding any heavy lifting;
- adjusting your workload (e.g. not attending after-school meetings);
- flexible working so you can stagger your working day if you suffer from morning sickness;
- providing you with a convenient suitable place to rest and lie down if you are pregnant or breastfeeding that minimises close contact with others and is located near a suitable place (e.g. toilets), as per the Workplace Regulations;
- providing you with reasonable agreed breaks that may be in addition to those already in the school timetable, including where these can be taken in a COVID-secure environment;
- providing you with a safe working environment that accommodates and adjusts both the physical and mental demands of your role accordingly at different stages of your pregnancy;
- providing a private, healthy and safe environment for breastfeeding teachers to express and store milk;
- allocating you to your own office;
- allocating you the safest alternative role with the greatest likelihood of minimising close contact with others;
- ensuring those who may have close contact are advised to clean their hands thoroughly and more often than usual;
- ensuring good respiratory hygiene for everyone coming into contact with you (e.g. 'catch it, bin it, kill it');
- maintaining enhanced cleaning regimes in and around your work area and any classrooms used;
- providing you with details of the arrangements for how pupils are expected to be managed to ensure compliance with any additional mitigations for you as a pregnant teacher or new mother (e.g. classroom layouts), including measures to deal with any medical conditions, behavioural issues and/or violent pupils and special educational needs or disabilities (SEND) in respect of COVID-19;
- providing you with details of the revised fire exit and any revised evacuation plans, including routes and procedures for you as a pregnant or new mother (these should identify any additional mitigations required in the context of COVID-19);
- providing you with the details of how you will be deployed to protect you in regards to any COVID-19 testing regime;
- providing you with the details of what contingency planning is in place for you as a pregnant or new mother in the event of a suspected outbreak of COVID-19;
- addressing the risk assessment on a regular basis, particularly in light of any medical evidence from your GP and/or midwife;
- addressing issues relating to stress, including postnatal depression, as well as those relating to mental-health wellbeing, particularly if utilising remote learning/working from home;
- addressing issues relating to personal protective equipment (PPE), including the wearing of face coverings in 'recommended' circumstances, including for both staff and pupils in classrooms and communal areas;

- addressing issues to do with ventilation and extremes of temperature, such as identifying and agreeing processes for keeping your working environment well ventilated, including through the use of carbon dioxide sensors as suggested by the Health and Safety Executive (HSE); and
- addressing issues relating to the use of public transport.

Furthermore, women who are pregnant are advised to keep mobile and hydrated to reduce the risk of blood clots during the pregnancy.

This could potentially be mitigated by including provisions for you to be able to access drinking water as and when required, without putting you at risk and while maintaining attention to social distancing.

The Union has produced a specific pregnancy health and safety risk assessment to assist and support those who are pregnant or new mothers. This can be accessed at: [www.nasuwf.org.uk/PregnancyMaternityDuringCovidNorthernIreland](http://www.nasuwf.org.uk/PregnancyMaternityDuringCovidNorthernIreland).

Your individual risk assessment should be provided to you by the employer in enough time to fully familiarise yourself with the situation at the earliest opportunity.

This should demonstrate what considerations have been given to the issues raised above and how the working environment has been adjusted accordingly.

School leaders will therefore need to be cognisant of this and share and discuss this with pregnant teachers as part of an ongoing risk assessment, including being flexible with how those members of staff are deployed if the school is not able to demonstrate that the risks are removed or mitigated satisfactorily, including:

- altering your working conditions or hours of work;
- providing suitable alternative work on the same terms and conditions, including working from home; and
- suspending you on full pay (if there is no suitable alternative work).

### **Teachers who are pregnant and in the third trimester**

In respect to women who are pregnant and in their third trimester (more than 28 weeks' pregnant), there is evidence which suggests a link between the symptoms of COVID-19 and complications in and around the time of birth, including premature birth, pre-eclampsia, the need for an emergency caesarean, and stillbirth.

Previous advice and guidance produced by the UK Government referenced the need for employers to take a *'more precautionary approach'* towards those who are pregnant and in the third trimester. This is because information produced by the **Royal College of Obstetricians and Gynaecologists (RCOG)** suggests that the majority of pregnant women admitted to hospital with COVID-19 were in the third trimester of pregnancy.

Because of this, issues to do with health and safety and the need for a comprehensive individual risk assessment become even more important for those who are pregnant and in the third trimester.

For example, the provision of suitable rest facilities which are located in a suitable place (e.g. near toilets), including, if necessary, appropriate facilities for teachers who are pregnant, becomes even more important during the third trimester, given that it is likely there will be issues associated with mobility.

Additional mitigations for those who are pregnant and in the third trimester could include the provision of a dedicated classroom for you to use on the ground floor that is close to an emergency exit, so you do not have to move around the school/college.

School leaders will need to be cognisant of this information, including being more flexible with how teachers who are pregnant and in the third trimester are deployed if the school is not able to demonstrate that the risks are removed or mitigated satisfactorily.

### **The significance of social distancing**

Although the easing and the withdrawal of various restrictions in relation to the COVID-19 pandemic has meant there is no longer a requirement to stay two metres apart, there is still an expectation that individuals limit close contact with those they do not live with and minimise the number, duration and proximity of social contacts.

This is particularly relevant for those who are pregnant. Indeed, the RCOG continues to advocate that those who are pregnant, particularly in the third trimester, pay particular attention to social distancing measures.

The same advice and guidance from the RCOG should be used as the basis for a risk assessment, including specific reference to evidence that suggests the risk of becoming infected with COVID-19 is higher in individuals who are more exposed; for example, those working in healthcare or other public-facing occupations (e.g. teaching).

School leaders will therefore need to be cognisant of this information and share and discuss this as part of an ongoing risk assessment, specifically with teachers who are pregnant and in the third trimester.

Your employer should be asked to demonstrate what considerations have been given to the issues raised above and how the working environment has been adjusted accordingly, particularly in respect of those who are pregnant and in the third trimester.

### **The role of the 'competent person'**

Pregnant and breastfeeding mothers, including those in the third trimester, should expect any discussions about their risk assessment to be undertaken by, or in conjunction with, a competent person in order to meet the requirements of health and safety law.

A 'competent person' should be someone in your school or college who has sufficient training and experience or knowledge to assist you in the process properly.

The level of competence required will depend on the complexity of the situation, but there is an expectation that the competent person is able to offer the specific advice and guidance required.

This can include the employer or someone within the school or college. If this is the case, you should enquire as to their experience and expertise so you can be satisfied that any and all concerns you have regarding your situation as a pregnant and breastfeeding mother can be addressed accordingly.

It should be noted that it is not essential for your employer to meet with you in person to discuss your risk assessment. Due to the ongoing COVID-19 pandemic, it is perfectly reasonable for your risk assessment to be conducted remotely, particularly if it would put you at risk to travel to the workplace to discuss your risk assessment.

However, even with a comprehensive risk assessment in place, you may still have concerns around returning to school. This is a natural reaction to the circumstances and it is likely that there will be a sense of trepidation ahead of the wider reopening. It is important, therefore, that these concerns or anxieties are shared with line managers/headteachers. If issues are not raised, they cannot be addressed, and good employers will welcome this feedback in order to review and adapt arrangements.

If you are feeling anxious about returning, you should also enquire about any employee assistance programmes (EAPs) that your employer may offer.

If there are concerns around your school's response and/or the risk assessment, in the first instance, these should be raised with your line manager/headteacher at the earliest opportunity. If you do not receive a satisfactory response, or continue to have any outstanding or ongoing concerns, you should contact the NASUWT for further advice.

### **Medical advice/occupational health**

If you still feel anxious about the plans in place for you as a pregnant teacher, particularly if you are a pregnant teacher in the third trimester, you should seek advice from your midwife and/or GP. Your health and wellbeing must be your top priority and your midwife and/or GP may be able to supply you with a fit note stating that you are fit to work, providing that the adjustments required are put in place.

As referenced above, a referral to occupational health can also be beneficial and supportive to addressing concerns in the workplace and facilitating a return. Absence also gives time for the employer to resolve any outstanding concerns around the workplace which can then facilitate a return.

Your school or college should respond sympathetically and there should be dialogue in order to try to address any underlying issues.

### **Vaccinations**

Whilst the decision over whether or not to get vaccinated rests with the individual, the RCOG recommends vaccination as the most effective way of protecting pregnant women from COVID-19.

It should be noted that schools and colleges are still obliged to undertake a risk assessment for pregnant and breastfeeding mothers whether or not they have been vaccinated.

### **Contingency planning for a COVID-19 outbreak**

Schools in Northern Ireland are expected to follow the advice and guidance from the Executive for schools given during the autumn term, which details the steps to be taken if there is an outbreak in the school. This should include considerations around pregnant women, including a review of the risk assessment and additional mitigations where appropriate, and members should check that this is in place.

If you have concerns around your school's response and/or the risk assessment, these should be raised with your line manager/headteacher at the earliest opportunity. If you do not receive a satisfactory response, contact the NASUWT for further advice.

As a pregnant teacher or new mother, you are protected from discrimination, victimisation and harassment under these provisions. All school risk assessments should be equality impact assessed to ensure that there are no discriminatory provisions or practices for pregnant teachers or new mothers.

### **Statutory Maternity Pay**

The normal rules apply during the COVID-19 pandemic for eligible teachers. You are entitled to receive up to 39 weeks' Statutory Maternity Pay (SMP) followed immediately by 13 weeks' unpaid maternity leave.

### **Substitute teachers who are pregnant or breastfeeding**

All workers and employees who are paid through PAYE, with tax and National Insurance deducted at source, are entitled to SMP if they meet the normal qualifying conditions.

If you are eligible, your school can start your SMP automatically when you are 36 weeks' pregnant if you are off work on maternity suspension, or with a maternity-related illness, or they can start it from the date that your period of work would have ended, if that is earlier.

If you do not meet the qualifying conditions for SMP, you may be able to claim Maternity Allowance (MA).

If you are applying for MA, you must send in payslips covering a 13-week period in the 66 weeks before your baby is due. You should send in payslips with your highest earnings.

### **Maternity leave**

Existing regulations continue to apply during the COVID-19 pandemic.

Your employer cannot insist that you take your maternity leave earlier because of the situation involving the COVID-19 pandemic. If the risk assessment indicates that you are better placed working from home, this should not trigger or impact on your maternity leave and when you wish to take it, although a pregnancy-related reason in the last four weeks of your pregnancy could include a medical suspension related to COVID-19, following a risk assessment.

Similarly, your employer cannot ask you to cut short your maternity leave, unless you are happy to do so. Maternity leave is provided to ensure that mothers can stay off work in order to look after a young baby.

You are still able to change the start date of your maternity leave, provided you give at least 28 days' notice before the original date and the new date, or as much notice as you reasonably can. Your employer cannot use the current situation with the pandemic to refuse your request.

The Government has not changed the regulations regarding maternity leave and the amount you are eligible to take, so if your leave has expired, you may need to give notice to take parental leave.

Parental leave is 18 weeks' unpaid leave per parent, per child. You can usually only take four weeks' parental leave per year, but your employer can agree to more. You must give at least 21 days' notice to take parental leave.

### **Legal rights during your pregnancy and maternity leave**

During the pandemic, existing regulations continue to apply. Your employer cannot treat you less favourably because you are pregnant or because you have taken maternity leave. For example, your employer cannot change your terms and conditions of employment whilst you are pregnant or whilst you are on maternity leave without your agreement. You also cannot be dismissed from employment or subject to unfair treatment because of your pregnancy or maternity.

In addition, you cannot be denied pay progression because of pregnancy or maternity leave, including if you are remote learning/working from home as a consequence of a risk assessment undertaken by the employer.

Your employer should also keep you informed of any changes, including job opportunities or planned redundancies.

The Coronavirus Restrictions Regulations 2020 state that COVID-19 is a serious and imminent danger to public health. As such, if you have to leave your work or take other action because of a serious or imminent risk to your health and safety (e.g. a student has suspected coronavirus symptoms), you are protected against dismissal or detrimental treatment such as loss of pay or disciplinary action.

### **Pregnant or breastfeeding mothers who are substitute teachers**

Substitute teachers who are pregnant are entitled to the same provisions and protections depending on their eligibility.

## **‘Keeping in Touch’ days**

During your maternity leave, you can have the option to work up to ten ‘Keeping in Touch’ (KIT) days. These are optional and need to be agreed by you and by your employer.

Despite the pandemic and the situation with schools, the Union believes that many teachers benefit from these days, and now, more than ever, those on maternity leave would benefit from discussing the proposals regarding their working arrangements and the plans the employer has for the academic year 2021/22, given the ongoing COVID-19 pandemic.

Any KIT days should be discussed with your employer, prior to them being agreed, including the logistics of how this would take place and any associated risk assessments in place if it cannot be done remotely, as well as the type of work you will be undertaking.

If KIT days are undertaken, remotely or otherwise, you should expect to be paid a day’s salary.

KIT days may be a reasonable way to engage with your school and discuss any concerns and anxieties you may have about returning to work, given the current situation with the COVID-19 pandemic.

KIT days may also provide an opportunity for you to discuss an individual risk assessment with your employer and what reassurances they can give that the workplace is safe for you to return to as a new mother.

## **Returning to work following maternity leave**

If you wish to return to work on the agreed date, then no notice is required. If you wish to return to work earlier than your agreed date, or if you wish to extend the period of your maternity leave, you will need to give your employer at least eight weeks’ notice in writing of the new date of return.

You should return to the same job if you took Ordinary Maternity Leave (OML). If you have taken Additional Maternity Leave (AML), then you have the right to return to a job that is not significantly different, but it may not be the same. If you become pregnant again during your maternity leave, then a second period of maternity leave will begin immediately, without you returning to work.

You may decide to make a request for flexible working, a career break or a temporary variation of contract and this should be treated in the same way as normal. Further information can be found on our [Flexible Working web page](#).

Your employer has a specific duty to protect your health and safety for six months after the birth and for as long as you are breastfeeding. This should, therefore, form an essential part of any risk assessment that is conducted and discussed with you before you return to work.

## **Additional financial help for pregnant or breastfeeding mothers during COVID-19**

The COVID-19 pandemic has had a number of impacts on pregnant and breastfeeding mothers, including increased financial hardship.

The Union is aware that there are a number of benefits which pregnant and breastfeeding mothers may be able to access to assist them during the pandemic, including:

### **Universal Credit**

This can be claimed in addition to SMP or Statutory Sick Pay (SSP) and will be partially disregarded when you claim Universal Credit.

If you are claiming MA, it will reduce your Universal Credit award pound for pound, as MA is counted as income. However, you should still apply for Universal Credit, as you may be entitled to help with paying your rent, for example.

## **Sure Start Maternity Grant**

If you are eligible for Universal Credit, you may also be able to claim the Sure Start Maternity Grant for your first baby and you may be eligible for Healthy Start vouchers. Further information and guidance can be found at:

- [NI Direct Sure Start Maternity Grant web page](#)

You may also be able to apply for discretionary housing payments from the Northern Ireland Housing Executive if you get help with your rent through Universal Credit or Housing Benefit. Further information and guidance can be found at:

- [the NI Housing Executive 'More help with paying your housing costs' web page](#)

It is important to check your situation carefully before you claim for some benefits. For example, if you claim for Universal Credit, it could lead to other benefits coming to an end, such as Housing Benefit, and you cannot go back onto these benefits.

## **Child Benefit**

Even if you are unable to register the birth of your child due to the situation in respect of COVID-19, you can still claim Child Benefit.

This should be done as soon as reasonably practicable, as claims for Child Benefit can only be backdated for three months.

Further details can be found at:

- [UK Government Claim Child Benefit web page](#)
- [UK Government Child Benefit General Enquiries web page](#)

January 2022