

NASUWT advice and guidance for pregnant teachers and those on 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 whether it is safe for them to return to the workplace from September 2020, given the situation with the COVID-19 pandemic.

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.

Advice and guidance from the Government classes those who are pregnant in the list of people who are vulnerable, meaning that they may be at higher risk of severe illness from COVID-19.

Whilst some restrictions are being eased, those who are pregnant should still take care to minimise contact with others from outside their household and should only return to the workplace if it is demonstrated that it is safe to do so.

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, such as:
 - letting you sit down if your job involves standing;
 - 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 and suitable place to rest and lie down if you are pregnant or breastfeeding, which allows social distancing to be adhered to, as per the Workplace Regulations;
 - providing you with reasonable agreed breaks that may be in addition to those already in the school timetable;
 - providing facilities such as 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 adherence to social distancing;
- addressing issues to do with stress, including postnatal depression, as well those to do with mental health and wellbeing, particularly those associated with remote learning/working from home;
- addressing issues to do with personal protective equipment (PPE);
- addressing issues to do with the use of public transport;
- providing suitable alternative work on the same terms and conditions; and
- suspending you on full pay (if there is no suitable alternative work).

This should be factored into any risk assessment undertaken by your employer, given that there are specific duties to those with protected characteristics under the Equality Act, such as expectant mothers.

The risk assessment 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.

Whilst advice from the Department for Education (DfE) on the full opening of schools from September 2020 advises that those staff in the most at risk categories, such as pregnant teachers who are clinically vulnerable, can return to the workplace, it still places an expectation on employers to conduct a risk assessment for pregnant women in line with the Management of Health and Safety at Work Regulations 1999 (MHSW).

Furthermore, DfE advice on the GOV.UK website states in relation to pregnant staff:

'The Royal College of Obstetrics and Gynaecology (RCOG) has published occupational health advice for employers and pregnant women. This document includes advice for women from 28 weeks' gestation or with underlying health conditions who may be at greater risk. We advise employers and pregnant women to follow this advice and to continue to monitor for future updates to it.'

The DfE guidance specifically references a particular RCOG guidance document which states:

'For pregnant women from 28 weeks' gestation, or with underlying health conditions such as heart or lung disease at any gestation, a more precautionary approach is advised. Women in this category should be recommended to stay at home.'

The full guidance is available at: www.rcog.org.uk/globalassets/documents/guidelines/2020-08-10-occupational--health--advice--for--employers-and--pregnant-women-during-the-covid-19-pandemic.pdf.

As this document is still specifically referred to by the DfE, schools should still be following it. Some employers have tried to say it does not apply as it is aimed at healthcare workers. However, the fact that the DfE are specifically referring to it means it does apply to teachers.

School leaders will therefore need to be cognisant of this information 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. This may involve working from home if your employer is not able to demonstrate that the risks are removed or mitigated against satisfactorily.

If this is the case, you would still be entitled to your normal pay even if the employer is unable to provide work for your normal working day/s, or if your duties have been changed.

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.

■ Supply teachers who are pregnant or breastfeeding mothers

Supply teachers working through an agency or umbrella company who are pregnant or are breastfeeding mothers are entitled to the same provisions when they are on a placement with a school (referred to as the 'end user' or 'client' in legislation), as the school must ensure the safety of its temporary workers in the same way as it does that of its own employees.

The Health and Safety at Work Act 1974 (HASAWA) 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, including those who are pregnant or breastfeeding mothers. This includes identifying and assessing risks to health and safety, and steps to reduce or eliminate these risks. This applies to COVID-19 in the same way as it does to any other hazard.

There is a joint responsibility between the provider (i.e. the supply agency) and the end user with regards to the health and safety of agency workers, including supply teachers who are pregnant or breastfeeding mothers. Supply staff who are pregnant or breastfeeding mothers must, therefore, be treated exactly as permanently employed teachers with regards to health and safety during the COVID-19 pandemic.

This applies equally if you are supplied via an umbrella company, as that is legally your employer. The umbrella company would therefore have the responsibility for your health and safety and take steps to address this, as you are their employee.

As a supply teacher who is pregnant or breastfeeding, you should expect your agency to take reasonable steps to identify any known risks concerning your health and safety and to satisfy itself that the school for which you are undertaking an assignment has taken appropriate steps to mitigate the risks associated with the COVID-19 pandemic, including producing an individual risk assessment as appropriate.

This should be provided to you by the agency in enough time to familiarise yourself fully with the situation with that employer.

Whilst your agency and the school have responsibilities in regards to your health and safety, you also have a duty to take reasonable care for your own health and safety, particularly during the COVID-19 pandemic. You must co-operate with your agency and the end user where you are working, including by providing them with any information which may necessitate the provision of a risk assessment before you undertake an assignment with a school, including if you are pregnant or breastfeeding.

If you are pregnant or a new mother and have worked for the same school ('end user' or 'client') in the same role for a 12-week qualifying period, you are also entitled to:

- reasonable paid time off to attend antenatal appointments when on assignments;
- be offered an alternative assignment if your assignment is unsuitable for pregnancy-related reasons; or
- be suspended on full pay if a suitable alternative assignment is not available.

If you are an employee of the agency or the umbrella company, you will be entitled to these rights from day one of any assignment.

Even if you have not been with a school for the 12-week qualifying period, it is still discrimination if your agency refuses to place you in a job or terminates an assignment because you are pregnant or are breastfeeding, or have given birth in the last six months.

It would also be seen as discrimination if your agency only gave you short-term assignments in comparison to those offered to other supply teachers, or if the agency refused to place you in a job because you are pregnant or breastfeeding.

Schools as end clients or hirers may also be seen to discriminate if they refuse to hire you because you are pregnant or breastfeeding, or they refuse to let you return following your maternity leave.

If your employer refuses to undertake a risk assessment and/or provide you with suitable alternative work, then you should contact the NASUWT for advice and support.

Members should be consulted on the risk assessment, and any member who has concerns about the provision of the risk assessment or its contents should contact the NASUWT for advice and support.

Statutory Maternity Pay (SMP)

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

If you are on Statutory Sick Pay (SSP) or on furlough, this still counts as continuous service for the purposes of qualifying for SMP. However, SSP is below the earnings threshold for SMP, so this may affect your average earnings.

Your employer must pay your maternity pay if you are eligible, even if your workplace is closing and you may be at risk of redundancy due to the current pandemic.

If you have been put on furlough, your employer is still obliged to pay your SMP at the full rate rather than 80% of normal pay.

If you are on furlough and started your maternity leave after 25 April 2020, your employer must use your normal earnings when calculating your SMP.

If you are still working and have agreed a pay cut, then this could affect the calculation of your SMP if your wages are reduced in the period used to calculate your SMP.

However, if your employer reverses the pay cut during any period up to the end of your maternity leave, then this should be treated as a pay rise and your employer must recalculate your average earnings to take account of the pay rise, and pay you any extra for the first six weeks of your SMP.

It is important to note that whilst on maternity leave, you are not eligible to be paid 80% of your normal salary as per the arrangements under the Coronavirus Job Retention Scheme (CJRS), unless you opt to end your maternity leave and ask to be put on furlough instead.

However, if you choose to end your maternity leave early to access the furlough scheme, then you may be expected to return to work once the scheme ends, or if your employer decides to take you off furlough.

You are not able to go back and access any maternity leave which you did not take, although you may be able to take any unpaid leave and pay as shared parental leave.

■ Supply teachers who are pregnant or breastfeeding mothers

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. This means that agency workers, such as supply teachers, can claim SMP.

If you are an employee of the agency or the umbrella company, you will be entitled to these rights from day one of any assignment.

If you are eligible, your agency can start your SMP automatically when you are 36 weeks' pregnant, or if you are off work on maternity suspension or furlough, or they can start it from the date that your placement would have ended, if that is earlier.

If you do not meet the qualifying conditions for SMP, you can claim Maternity Allowance (MA).

If you have been put on furlough, your employer is still obliged to pay your MA at the full rate rather than 80% of normal pay, and any period of furlough still counts as continuous service for the purposes of qualifying for MA. The same is true if you are accessing SSP.

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. If you need to send in payslips covering the period when you were on furlough, you should let the MA Claims Department know, so that it can use your normal 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.

If your workplace has closed and staff have been placed on furlough, then you can remain on furlough until your maternity leave starts.

The Government has not changed the regulations regarding maternity leave and the amount you are eligible to take, so if your leave has expired, then 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 in the independent sector

The same provisions and protections apply to pregnant or breastfeeding mothers working in the independent sector, including those who may have been subject to furlough under the CJRS.

■ Pregnant or breastfeeding mothers who are supply teachers

Supply teachers working through an agency or umbrella company who are pregnant are entitled to the same provisions and protections, depending on their eligibility.

Pregnant or breastfeeding mothers who are supply teachers may have been subject to furlough under the CJRS. They should not suffer detrimental treatment under the furlough arrangements that their agency and/or umbrella company has in place during the current pandemic.

'Keeping in touch' (KIT) days

During your maternity leave, you can have the option to work up to ten KIT days. These are optional and need to be agreed by you and 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 in the coming months in preparation for the opening of schools for the academic year 2020/21.

Any KIT days should be agreed and 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 this 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 reassurance 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. If you have taken Additional Maternity Leave, 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.

On your return, your employer must treat you in the same way as other employees, including placing you on furlough if that is what has happened to other teachers.

The advice and guidance from the Government is clear that parents on statutory maternity leave who return to work in the coming months will be eligible for the furlough scheme even after the 10 June cut-off date, provided your employer has previously furloughed employees for a minimum period of three weeks.

If other teachers are currently working from home due to the pandemic, then your employer must take steps to ensure that you can work from home as well, when your maternity leave ends.

You may decide to make a request for flexible working, and this should be treated in the same way as normal. Further information can be found at: www.nasuwts.org.uk/advice/conditions-of-service/flexible-working.html.

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.

■ Pregnant or breastfeeding mothers who are supply teachers

Pregnant or breastfeeding mothers who are supply teachers may have been subject to furlough under the CJRS. They should not suffer detrimental treatment under the furlough arrangements that their agency and/or umbrella company has in place during the current pandemic. This would include placing you on furlough if that is what has happened to other supply teachers.

The advice and guidance from the Government is clear that parents on statutory maternity leave who return to work in the coming months will be eligible for the furlough scheme even after the 10 June cut-off date, provided your employer has previously furloughed employees.

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 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: <https://www.gov.uk/sure-start-maternity-grant/how-to-claim>; <https://www.mygov.scot/best-start-grant-best-start-foods/>; <https://www.healthystart.nhs.uk/>.

You may also be able to apply for discretionary housing payments from your local authority if you get help with your rent through Universal Credit or Housing Benefit. You should ask your local authority how to apply.

If you are not eligible for Universal Credit, you may be able to get a reduction in your council tax. For those in England and Wales, you may be able to apply to your local authority for a discretionary reduction in your council tax bill. Local authorities have the ability to assist in cases of financial hardship, including those brought about by loss of work or if you are unable to work in the late stages of pregnancy or after childbirth.

The local authority may also have a local welfare assistance scheme for those experiencing exceptional difficulties.

This could include situations arising from the COVID-19 pandemic.

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: <https://www.gov.uk/child-benefit/how-to-claim>; <https://www.gov.uk/government/organisations/hm-revenue-customs/contact/child-benefit>.