

## Crosslee Community Primary School



## Maternity Policy and Procedure for Teachers

May 2022

This policy and procedure has been produced by One Education’s HR and People service. The HR and People team provides management and HR support and advice to schools and academies purchasing their services under an agreed Service Agreement. For further information please contact the HR and People team via the HROne Helpline: 0844 967 1112 (local rate from landline) or HROne Helpline Email: [hrpeople@oneeducation.co.uk](mailto:hrpeople@oneeducation.co.uk) Website: [www.oneeducation.co.uk](http://www.oneeducation.co.uk)

This policy is recommended for adoption by all maintained schools including community, voluntary controlled, community special, maintained nursery, foundation, foundation special and voluntary aided schools. It is also recommended for adoption by academies and free schools (modified as appropriate and taking-into-account the particular circumstances of the relevant academy or free school). Some school or academy specific provisions are included. This policy should therefore be adapted as necessary and inappropriate provisions deleted. The HR and People team can assist in adapting this policy to fully reflect a school’s status including their academy or multi academy trust (MAT) status.

References in this policy to schools include a reference to academies and free schools unless otherwise stated. References in this policy to the headteacher include a reference to an academy or free school principal and references to the governing body include references to governing boards and/or trust boards as applicable.

<b>Document Control</b>	
Title	Maternity Policy & Procedure for Teachers
Date	May 2022
Supersedes	Maternity Policy & Procedure for Teachers 2020
Amendments	
Related Policies/Guidance	Conditions of Service for School Teachers in England and Wales (August 2000), Employment Rights Act 1996, Employment Relations Act 1999, Employment Act 2002, Work and Families Act 2006, other “family friendly” policies, Attendance Management Policy, Equalities guidance
Review	Every 2 years
Author	HR and People, One Education Ltd
Date adopted	11 <sup>th</sup> May 2022

**Equality Statement:** - Under the public sector equality duty (PSED), all schools/academies must have due regard to the need to eliminate discrimination, harassment and victimisation and any other conduct prohibited by the Equality Act 2010; to advance equality of opportunity between those who share a relevant protected characteristic and those who do not share it and to foster good relations across all protected characteristics. This means schools/academies must take-into-account equality considerations when policies are being developed, adopted and implemented. The One Education HR and People team regularly reviews all policies and procedures which are recommended to schools/academies to ensure compliance with education and employment legislation including the Equality Act 2010. Consultation with schools/academies is an important part of this review process. Headteachers, Principals and Governing Bodies are asked to contact the HR and People team via the HROne Helpline if they believe there are any negative equality impacts in their school/academy in relation to the application of this policy/procedure. Schools should also contact HR and People team if they need to access this policy in a different format.

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## Introduction

This policy applies to all teachers employed in maintained schools and those to whom the Conditions of Service for School Teachers in England and Wales (the “Burgundy Book”) apply. This includes teachers employed in academies and free schools who were subject to transfer under TUPE Regulations unless alternative terms and conditions have since been agreed. It may also be adopted for use in schools such as academies and free schools where the conditions of the Burgundy Book are being applied.

The document is divided into 7 main sections covering:

1. [Eligibility](#)
2. [Obligations](#)
3. [Antenatal](#)
4. [Maternity Leave](#)
5. [Pay](#)
6. [Returning to Work](#)
7. [Absences](#)

Under the policy, ‘childbirth’ means the birth of a living child or the birth of a child whether living or dead after 24 weeks of pregnancy.

### 1. Eligibility

All teachers who are pregnant are entitled to maternity leave irrespective of length of service or hours worked each week. Benefits may vary depending on length of service, hours and/or pay.

## 2. Obligations

### 2.1 Employee

In order to be eligible for maternity leave the employee must:

- Continue to be employed (whether or not at work) immediately before the start of the maternity absence
- Notify the school in writing (see [Appendix 1](#)) as soon as practicable but no later than the 15<sup>th</sup> week before the expected week of childbirth (EWC):
  - ✓ that she is pregnant;
  - ✓ of the expected week of childbirth;
  - ✓ when she proposes to commence her maternity leave.
- Forward the **MATB1 Certificate** (issued by the doctor or certified midwife stating the date on which the baby is due) to the school. (The earliest this can be issued is 20 weeks before the EWC).
- Not remain at work if certified medically unfit to do so.

If an employee wishes to change the date on which her leave starts she must give 28 days' notice in writing. The school must write to the employee within 28 days to confirm the new expected date of return to work.

## 2.2 Employer

Within 28 days of the initial notification from the teacher the school must write to her informing of:

- ✓ her rights to maternity leave and her return to work obligations;
- ✓ confirmation of the start and end of the maternity period;
- ✓ the pay entitlement during the period of maternity leave;
- ✓ the expected date of the employee's return to work.

There is a legal obligation under the Management of Health and Safety at Work Regulations 1999 for an employer to assess any risks to a pregnant employee and her unborn child. As such the school should undertake or arrange a **risk assessment** within the first 4 weeks of notification of pregnancy and review it every 4 weeks (or earlier should it be required) until the employee begins maternity leave. If risks are identified, the assessor should notify the employee and:

- ✓ remove the element of the job that is causing the risk, if this is possible;
- ✓ explore the possibility of alternative work in consultation with the employee; or
- ✓ arrange for the employee to take paid leave if no suitable alternative work can be found.

## 3. Antenatal Care

### 3.1 time off during pregnancy

Employees are entitled to a reasonable amount of paid time off during normal working hours for antenatal care made on the advice of a registered medical practitioner. This may include relaxation classes and parent-craft classes. Employees should advise the school of any such appointments in advance and except for the first appointment, employees should show the employer (if requested) an appointment card or other documents showing that an appointment has been made.

## 4. Maternity Leave

### 4.1 Compulsory maternity leave

Employees **must take a minimum of two weeks' maternity leave** following the birth of their child. An employee may not return to work during this time.

### 4.2 Ordinary maternity leave

Regardless of the length of service or hours of work, employees are entitled to take up to 26 weeks' ordinary maternity leave. Employees have the right to choose when to start their maternity leave any time after the beginning of the 11<sup>th</sup> week before the baby is due to be born.

If the baby is born before maternity leave commences, leave will start on the date the baby is born. If an employee is taken ill with a pregnancy related condition after the beginning of the 4<sup>th</sup> week before the EWC, maternity leave will start automatically the following day.

#### 4.3 Additional maternity leave

In addition to ordinary maternity leave all employees have the right to take up to 26 weeks' additional maternity leave, beginning on the day immediately following the day on which ordinary maternity leave ends.

A total of up to 52 weeks maternity leave is available to all employees. Please refer to [paragraph 5](#) for details of pay during maternity leave.

#### 4.4 Contact during maternity leave

The Headteacher will ensure that arrangements are made for keeping in touch with the teacher during their leave. The amount of contact will be dependent upon the wishes of the employee; however, the school reserves the right in any event to maintain reasonable contact with the employee from time to time during maternity leave. Reasonable contact may be to:

- ✓ discuss the employee's plans to return to work;
- ✓ discuss any special arrangements to be made, or training to be given, to ease an employee's return to work; and/or
- ✓ update the teacher on developments at work during their absence.

#### 4.5 Keeping-in-touch (KIT) days

Except during the first two weeks after childbirth, an employee can agree to work, or to attend training, for up to ten days during either ordinary maternity leave or additional maternity leave without bringing the period of maternity leave to an end and without loss of a week's OMP, SMP or MA. These are known as 'keeping-in-touch' (KIT) days. Any work carried out on a day constitutes a day's work for these purposes. Working for part of a day will count as one day. An employee will be paid for any work undertaken and this will usually be at their normal daily rate of pay.

The school cannot require an employee to carry out any work, and the teacher has no right to undertake any work during their maternity leave. Any work undertaken is entirely a matter for mutual agreement between the school and teacher. Any KIT days worked do not extend the period of maternity leave. Once the KIT days have been used up the employee will lose a week's SMP for any week in which they agree to work for the school.

## 5. Maternity Pay

Maternity pay may be made up of the following elements subject to entitlement. Please also refer to [Appendix 2](#) (flow chart).

#### 5.1 Statutory Maternity Pay (SMP)

SMP is a statutory entitlement for those employees whose average weekly earnings are not less than the lower earnings limit for National Insurance Contributions *and* who have completed 26 weeks' continuous service with the employer by the end of the 15<sup>th</sup> week

before the EWC. SMP is paid by the school and if eligible, forms part of the Occupational Maternity Pay (OMP).

SMP is treated as income and is therefore subject to deductions for Income Tax, National Insurance and pensions (where applicable). Payment of SMP is **not** conditional on the employee returning to work.

Employees are not entitled to SMP if either of the following apply during the period in which they are being paid SMP:

- ✓ they start working after the birth of the baby for another employer;
- ✓ they are taken into legal custody.

It is the employee's responsibility to notify the school if either of the above events occur in the period in which they are being paid SMP. Any overpayment of SMP will be reclaimed by the school.

### 5.2 Maternity Allowance (MA)

Employees who do not meet the eligibility criteria for SMP may be entitled to Maternity Allowance (MA) paid directly by the Department for Work and Pensions (DWP). The school's payroll provider will issue the employee with a form SMP1 and advise that they apply to the DWP for MA.

### 5.3 Occupational Maternity Pay (OMP)

OMP is paid to employees who have completed at least one year's continuous service by the 11<sup>th</sup> week before the EWC. (Payment for teachers with less service is limited to SMP or MA only).

Occupational maternity pay is paid as follows:

- a) First four weeks' absence: full pay, offset against any payment made by the way of SMP or MA;
- b) Next two weeks' absence: 9/10ths of a week's pay, offset against any payments made by way of SMP or MA;
- c) Next 12 weeks' absence: half pay without deductions for SMP or MA except by the extent to which combined OMP pay and SMP or MA exceeds full pay;
- d) Next 21 weeks' absence: SMP or MA entitlement only;
- e) Any remaining period of absence will be without pay.

For the purpose of this scheme, a week's pay is treated as the amount payable to the employee under the contract of employment. If there are significant variations in the employee's salary, the average salary over the 12 weeks preceding the date of absence will be treated as a week's salary.

**OMP is subject to an employee returning to work for a period of 13 weeks** following maternity leave. If the employee does not return to work for the required period, she is required to refund the OMP after the first 6 weeks of the maternity leave. SMP or MA is not refundable, even if the employee does not return to work.



If the teacher is unsure whether they will be returning to work following maternity leave, they can request that the school's payroll provider withhold the refundable OMP element of maternity pay. If the employee subsequently returns to work for the qualifying period, they will receive the OMP due to them.

Where the school agrees, a full-time employee may return to work on a part-time basis for a period which equates to 13 weeks' full-time service. Similarly, where the school agrees, a part-time employee may return to work on a different part-time basis for a period which equates to 13 weeks' part-time service relating to her previous contract.

The 13 week period (or part-time equivalent) starts from the date the employee actually returns to work or the date during the school holiday on which the employee has notified the school in writing that she is available to work, provided she actually returns to duty on the first day after the period of closure.

#### 5.4 Pensions

If an employee is receiving contractual or statutory pay, they will continue to accrue pension benefits. If they are not receiving any pay, they will become a deferred member of the Scheme. For more information please contact <http://www.teacherspensions.co.uk>

#### 5.5 Salary Sacrifice

Employees who have sacrificed salary in return for benefits (e.g. childcare vouchers) may wish to review the arrangements in advance of their maternity leave. Advice should be sought from the school's payroll provider or the benefit provider at the earliest opportunity.

## 6. Returning to Work

### 6.1 Returning after Ordinary Maternity Leave (OML)

After ordinary maternity leave, the teacher is entitled to return to the job in which she was employed under her original contract of employment.

If an employee fails to return to work on the expected date after OML due to illness, please refer to [section 7.1](#).

### 6.2 Returning after Additional Maternity Leave (AML)

After additional maternity leave, an employee is entitled to return to either the job that she left, or a suitable alternative job, if her original job is no longer available, on terms and conditions no less favourable than those which would have been applicable to her had she not been absent. ('Job', for this purpose, means the nature of the work which she is employed to do and the capacity and place in which she is so employed.)

Where it is not practicable by reasons of redundancy for the employer to permit the employee to return to work in her job as defined in the above paragraph, the employee is entitled to be offered a suitable alternative vacancy, where one exists, provided that the work to be done in that post is suitable to her and appropriate to the circumstances, and that the capacity and place in which she is to be employed and her terms and conditions of employment are not substantially less favourable to her than if she had been able to return to the job in which she was originally employed.



If an employee fails to return to work on the expected date after AML due to illness, please refer to [section 7.1](#).

### 6.3 Notice Requirements

Before beginning Maternity Leave an employee should be notified of the date of her expected return to work. The employee is not required to give any further notice of her intentions to return on this date. However, if an employee wishes to return early from maternity leave they **must** give 28 days' notice. Where this notice is not given, the employer **may** postpone the return for up to eight weeks from the date when the employee informs the employer of the early return or up to the expected date of return, whichever is sooner.

If the employee does not return on the specified date, their absence may be recorded as unauthorised.

Where an employee is unable to return to work at the end of her period of maternity leave due to sickness, the conditions of the sick pay scheme and the school's attendance policy will apply. Please refer to [section 7.1](#)

### 6.4 Flexible Working

Employees have the right to request a variation to their contract so that they can work more flexibly and thereby balance their childcare responsibilities with work commitments.

There is no automatic right to return to work following Maternity Leave on an adjusted working pattern, however careful consideration will be given on receipt of a request in accordance with the school's Flexible Working policy.

### 6.5 Continuous Service

Maternity leave is regarded as continuous service and does not constitute a break in service even when unpaid. Any period of unpaid leave however does not count towards pensionable service in the assessment of retirement benefits.

During the time that an employee is receiving maternity pay, National Insurance, Income Tax and pension contributions (where applicable) will be deducted from the gross pay.

## 7. Absences

### 7.1 Sickness

Maternity leave is not taken into account for the calculation of the period of entitlement to sick leave.

If an employee is absent through illness whilst pregnant, they should report this to the school in the usual way. Such absences will be managed through the school's Attendance Management policy. If, however, employees are absent with a pregnancy related illness, whether wholly or partly, on or after the start of the 4th week before the baby is due, then their maternity leave will start automatically on the following day.

If an employee is absent through illness whilst pregnant and the illness is attributable to the pregnancy, including absence on account of miscarriage, and this occurs outside the period of absence for maternity, it will be treated as ordinary absence on sick leave and shall be

subject to the conditions governing sick leave, provided it is covered by a doctor's statement (e.g. Fit note).

If the teacher is unable to return to work on the expected date due to illness, they should report this to the school in the usual way. Full entitlement to SMP has to be paid before Statutory Sick pay (SSP) can start. Absences will then be managed through the School's Attendance Management policy and procedure.

## 7.2 Other absences

If, in the early months of pregnancy, an employee is advised by an approved medical practitioner to absent herself from school because of the risk of rubella she will be granted leave with full pay. If the advice relates to other potential infections, full sick pay will be allowed, provided that the teacher does not unreasonably refuse to serve in another school where there is no such undue risk, if requested to do so.

## 7.3 Fertility Treatment

There is no statutory right to time off to undertake fertility investigations or treatment e.g. in-vitro fertilisation (IVF). This should be requested through the normal processes detailed in the school's Leave of Absence policy for medical appointments.

When embryo transfer occurs it is advisable that the teacher notify the school that she has had an embryo transfer and may become pregnant. Once an embryo attaches itself inside an employee's body she is legally regarded as pregnant and the provisions of this policy will apply. In these circumstances the employee must inform the school in writing of confirmation of her pregnancy as detailed in [section 2.1](#) of this policy.

## 7.4 Statutory Annual Leave

Teachers are entitled to 5.6 weeks (28 days) statutory annual leave under the Working Time Regulations and they must be allowed to take this leave outside of their maternity leave. Teachers will accrue statutory annual leave during their maternity absence. Any entitlement to statutory leave will however be offset against periods of school closure. The annual leave year for teachers runs from 1<sup>st</sup> September to 31<sup>st</sup> August. In most cases, therefore, periods of school closure before and after the maternity leave period will more than equal the 28 day annual leave entitlement.

If the return from maternity leave is close to the end of the leave year and there is insufficient time to offset any remaining statutory leave this may be carried forward and offset against school closures in the following school year.

## Further advice

The Headteacher (or nominee) should seek advice from One Education HR&People if they have any queries about the content or implementation of this policy.

**Notifications of entitlement to pay and leave may be undertaken on behalf of the school by the school's payroll provider. The school will ensure that all relevant documentation is provided in a timely manner to the payroll provider.**

## Relevant Associated Policies

- Attendance Management Policy
- Leave of Absence Policy
- Flexible Working Policy
- Shared Parental Leave Policy

## Appendix 1

### Notification of Pregnancy

Employee Name	
Employment Start Date	
Job Title	
Expected date of Childbirth (confirmed by a medical practitioner in writing i.e. MATB1)	
Expected Week of Childbirth (EWC) (Sunday before the expected date of childbirth)	
MATB1 form Attached to this Notification? If not, when will this be supplied?	YES / NO Date MATB1 to be issued:
Requested maternity leave start date	
Do you intend to take the full 52 weeks maternity leave	YES / NO
If the answer is NO to the above, your requested maternity leave end date	
Any other information that the school may need to know regarding your pregnancy	

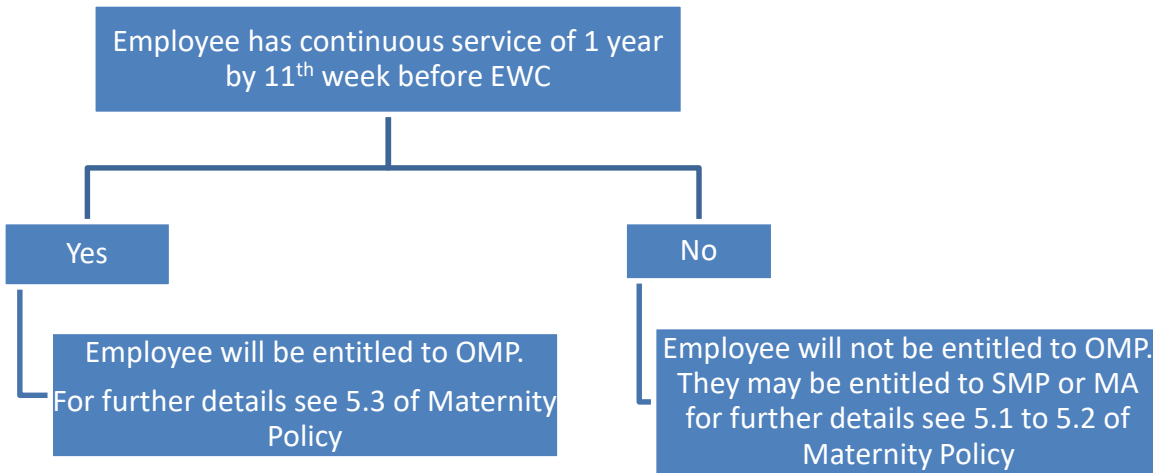
Date:

Signed:

## Appendix 2

### Occupational Maternity Pay (OMP) Entitlements

#### Is the employee entitled to OMP?



#### Does the employee need to pay back OMP following Maternity Leave?

