

# Birmingham Teachers' Maternity Leave Scheme and Leave for Adoption

## 1. Definitions

1.1 The Scheme applies to school teachers employed by Birmingham City Council (the authority) and, where adopted by the governing bodies of voluntary aided and foundation schools maintained by the authority, to teachers employed in those schools.

1.2 The Scheme shall apply to all pregnant school teachers in regular employment, regardless of the number of hours worked per week. Given the requirement to return to work for a minimum number of weeks the Scheme is limited to those teachers whose contracts of employment will run for long enough to allow them to fulfil that requirement. It therefore does not apply to teachers employed on a day to day or other short notice basis to whom statutory regulations on maternity leave and pay will apply.

1.3 Childbirth (or confinement) means the birth of a living child or the birth of a child, whether living or dead, after twenty-four weeks of pregnancy.

1.4 For the purpose of this Scheme a week's pay shall be treated as the amount payable to the teacher under the current contract of employment. If there are significant variations in the teacher's salary, the average salary over the twelve weeks preceding the date of absence shall be treated as a week's salary.

1.5 For the purpose of this Scheme (as distinct from statutory rights) continuous service shall be defined as continuous service as a teacher employed by one or more local authorities and/or governing bodies of voluntary aided and foundation schools maintained by local authorities.

1.6 Nothing in the provisions of the Scheme shall be construed as providing rights less favourable than statutory rights.

## 2. Initial obligations on the teacher

2.1 To benefit from the scheme the teacher must:

- be employed by the employer immediately before the start of her absence;
- notify the employer in writing as soon as practicable but not later than the end of the fifteenth week before the expected week of childbirth (EWC) (or, if that is not reasonably practicable, as soon as is reasonably practicable) of her pregnancy, the expected week of childbirth and the date on which she intends her maternity leave to

start, which shall not be earlier than the beginning of the eleventh week before the expected week of childbirth. She must produce on request a certificate from a registered medical practitioner or a certified midwife stating the expected week of childbirth;

- declare in writing, at the time of notification of her intended absence, that she intends to return to work with her employer, if that is her intention and if she is able to return to work with her employer; and
- not remain at work if certified medically unfit to do so, taking into account the provisions of Health and Safety at Work Regulations.

### 3. Ante-natal care

3.1 Any pregnant teacher has the right to paid time off to attend for ante-natal care and must produce evidence of appointments if requested to do so by her employer.

### 4. Maternity leave

4.1 All teachers, irrespective of length of service, are entitled to remain absent for up to fifty-two weeks statutory maternity leave, subject to the statutory requirements for such leave.

4.2 Teachers who have completed not less than six months' continuous service as defined in 1.5 above at the beginning of the eleventh week before the EWC shall have an entitlement to the amounts of pay during the first twenty-six weeks' leave of absence set out in section 6 below.

4.3 Maternity leave shall not begin before eleven weeks before the EWC and must continue for at least two weeks after the day of childbirth. Subject to this constraint and to the two exceptions set out below, teachers are required to notify their employer of the date on which they intend to start their maternity leave. The exceptions are where the teacher is absent from work "wholly or partly because of pregnancy or childbirth" after the beginning of the fourth week before the EWC, in which case maternity leave will start automatically on the day following the start of her absence, and where the baby is born before maternity leave starts, in which case the day following the date of childbirth will be regarded as the first day of maternity leave.

4.4 Within 28 days of receipt of the initial notification of the start of maternity leave the employer will write to the teacher stating the date on which her statutory maternity leave will end.

## 5. Leave of absence

5.1 Under this Scheme, if a teacher has at least six months' continuous service as defined in 1.5 above, special leave of absence immediately following the fifty-two weeks of statutory maternity leave may be granted without pay up to a maximum period of eighteen weeks (making total leave of seventy weeks). The right to return is limited to the contractual right to return at the end of the agreed, extended period of absence (unless the teacher has exercised in the meantime the statutory right to return early on a date within the statutory maternity leave period by giving 8 weeks' notice).

## 6. Maternity Pay

6.1 There will be no payment for teachers who have less than twenty-six weeks' continuous service as defined in 1.5 above at the beginning of the eleventh week before the EWC. For those who have at least twenty-six weeks' continuous employment with Birmingham local authority at the beginning of the fifteenth week before the expected week of childbirth, but less than six months' continuous service as defined in 1.5 above, Statutory Maternity Pay will be payable if the teacher meets all the other requirements for the payment of Statutory Maternity Pay.

6.2 Payment to a teacher who has completed at least six months' continuous service as defined in 1.5 above at the beginning of the eleventh week before the EWC shall be as set out below and shall be made on the condition that the teacher will be available for work for the required period specified in section 7 below.

6.3 A teacher who has completed at least one year's continuous service as defined in 1.5 above will be entitled to full pay in respect of the first eight weeks of absence, half pay for the following ten weeks. The eight weeks' full pay will be offset against payments made by way of Statutory Maternity Pay (or Maternity Allowance for employees not eligible for Statutory Maternity Pay), provided that the total weekly payment shall not be less than nine tenths of a week's salary reduced only by flat-rate Maternity Allowance. The ten weeks' half pay shall be without deductions except by the extent to which a combination of half pay and Statutory Maternity Pay (or, if not entitled to Statutory Maternity Pay, Maternity Allowance) exceeds full pay. If entitled to Statutory Maternity Pay the teacher will receive that Pay in addition to the ten weeks' half pay (provided that the total does not exceed full pay) and also for the subsequent period up to her return to work or until she has received a total of nine months' maternity pay (whichever is the sooner). A woman in receipt of child care vouchers from the City Council may continue to receive them during her maternity leave as long as her other pay exceeds the qualifying minimum for such vouchers or may opt out of the voucher scheme during her maternity leave.

6.4 A teacher who has completed at least six months' but less than one year's continuous service as defined in 1.5 above will be entitled to eighteen weeks half pay without deductions, except by the extent to which a combination of half pay and Statutory Maternity Pay (or, if not entitled to Statutory Maternity Pay, Maternity Allowance) exceeds full pay. If entitled to Statutory Maternity Pay the teacher will receive that Pay in addition to the eighteen weeks' half pay (provided that the total does not exceed full pay) and also for the subsequent period up to her return to work or until she has received a total of thirty-nine weeks' maternity pay (whichever is the sooner).

6.5 Any remaining period of absence up to the date of return shall be without pay.

6.6 In the event of the teacher not being available to return to her job for the required period (see section 8 below) she will be required to refund the full amount received, less Statutory Maternity Pay, which she is entitled to retain and which includes nine tenths of full pay for six weeks, and less any pay due for statutory annual leave entitlement in respect of the maternity leave period which has not been offset by school closure periods before or after her maternity leave. The requirement to refund the full amount may be reduced at the discretion of the authority.

6.7 If a teacher works for a day or part of a day under paragraph 7.1 ('Keeping in Touch' days) her maternity pay for that day or part of a day shall be made up to normal pay for that day or for the proportion of that day which the teacher works, or if she has exhausted her entitlement to maternity pay she shall be paid normal pay for that day or the appropriate proportion of that day.

## **7. Work during maternity leave ('Keeping in Touch' Days)**

7.1 In accordance with statutory regulations an employee may carry out up to ten days' work for her employer during her statutory maternity leave period without bringing her maternity leave to an end (work carried out for part of a day counting as a day's work for this purpose), but she shall not be required to undertake such work, neither shall she have the right to work during her maternity leave, so any work shall be by mutual agreement. Work may include training or any activity undertaken for the purpose of keeping in touch with the workplace. None of the days worked shall take place during the two weeks following childbirth.

## **8. Subsequent obligations on the teacher**

8.1 The teacher's subsequent obligation, whether she is full-time or part-time or is changing her contractual hours of employment on her return to work, is to return to her job for at least thirteen weeks (including periods of school closure) as a qualifying

condition for the benefits of this Scheme. This requirement may be reduced at the discretion of the employer.

8.2 The thirteen-week period (or part-time equivalent) starts from the date on which the teacher returns to work or the date during the school holiday on which the teacher's period of absence ends. Should a teacher take parental leave immediately following maternity leave or the special leave of absence after 52 weeks of maternity leave as provided by this scheme, that period of parental leave will not count towards the period of thirteen weeks.

8.3 Following a return to work the normal contractual provisions for termination upon notice (as set out in the conditions of service for school teachers) shall apply.

## 9. Return to work

9.1 Subject to paragraph 8.2 below and to the conditions set out in paragraphs 8.3 to 8.9, a teacher's right to return to work under law is the right to return to work with the person who was her employer before the end of her statutory maternity leave period or (where appropriate) that employer's successor. If she returns after a period of ordinary maternity leave (during or at the end of 26 weeks' maternity leave) she is entitled to return to the job in which she was then employed before her absence with her seniority, pension rights and similar rights as they would have been if she had not been absent and on terms and conditions not less favourable than those which would have applied if she had not been absent. If she returns after a period of additional maternity leave (i.e. between 26 and 52 weeks' maternity leave) she is entitled to return to the job in which she was employed before her absence or, if it is not reasonably practicable for the employer to permit her to return to that job, to another job which is both suitable for her and appropriate for her to do in the circumstances, and with her seniority, pension rights and similar rights as they would have been if she had not been absent and on terms and conditions not less favourable than those which would have applied if she had not been absent.

9.2 A teacher who wishes to return before the end of her maternity leave period as notified to her by her employer shall give her employer, in writing, not less than 8 weeks' notice of the date on which she intends to return. If she wishes subsequently to vary this original return date she must also give 8 weeks' notice of the proposed variation. If the teacher attempts to return earlier than the end of her maternity leave period without giving appropriate notice, her employer can postpone her return date to secure 8 weeks' notice, but not beyond the end of the maternity leave period.

9.3 A teacher who qualifies for leave under paragraph 4, having notified the date of return in accordance with paragraph 8.3 or 8.4 above, may postpone it if, before the notified date of return, she gives the employer a medical statement stating that she will be incapable of work.

9.4 When, because of an interruption of work (whether due to industrial action or some other reason), it is unreasonable to expect a teacher qualifying for leave under paragraph 4 to return on the notified date, she may instead return when work resumes, or as soon as reasonably practicable thereafter.

9.5 Subject to sub-paragraph 4.3 above, absence on account of sickness, whether attributable or not to the pregnancy, which occurs outside the period of maternity leave shall be treated as absence on sick leave, provided that it is covered by a medical certificate, and shall be subject to the provisions of the Teachers' Sick Pay Scheme. Such absence not covered by a medical certificate shall be treated as leave without pay.

## **10. Pregnant teachers and rubella**

10.1 If in the early months of pregnancy a teacher is advised by an approved medical practitioner to absent herself from school because of the risk of rubella she shall be granted leave with full pay, provided that she does not unreasonably refuse to serve in another school where there is no such undue risk.

## **11. Notice provisions: teachers not intending to return to work**

11.1 A teacher who does not intend to return to work after childbirth is subject to the notice provisions set out in paragraph 5.6 of the Burgundy Book, i.e. to termination of employment before the expected date of childbirth, as the maternity leave scheme is for teachers genuinely intending to return to work. However, Birmingham City Council allows such a teacher to give informal notification of her intention to resign and to defer her resignation until after the safe delivery of her child, on the understanding that in such cases the resignation will be submitted as soon as possible after childbirth and will not be subject to the normal notice periods. Statutory Maternity Pay will be payable to the teacher if she is eligible for it.

## **12. Adoption**

12.1 The Paternity and Adoption Leave Regulations shall apply to teachers who are adoptive parents, by varying this maternity leave scheme to comply with the Regulations. The main variations are set out below.

12.2 The teacher may choose to begin a period of statutory adoption leave on the date on which the child is placed for adoption or on a predetermined date no more than fourteen days before the date on which the child is expected to be placed. The

date must be specified in the teacher's notice of intention to take statutory adoption leave to the employer and that notice must be given no more than seven days after the date on which the teacher is notified of having been matched with a child for the purposes of adoption or, where that is not reasonably practicable, as soon as is reasonably practicable.

12.3 The teacher must provide documentary evidence from the adoption agency giving the name and address of that agency, the name and date of birth of the child, the date on which the teacher was notified of the match with the child and the date on which the agency expects to place the child with the teacher.

12.4 Teachers are entitled to additional adoption leave provided that the ordinary adoption leave does not end prematurely.

12.5 If a disrupted placement occurs during adoption leave (through the death of the child or the return of the child to the adoption agency) the adoption leave ends eight weeks after the end of the relevant week specified in the Regulations.