

NORTHERN IRELAND COLLEGE EMPLOYERS' FORUM

CIRCULAR NO: CEF 2011/06

11 May 2011

To: Joint Secretaries, Lecturers' Negotiating Committee
Directors/Principals and Chairpersons of Governing Bodies of Colleges of
Further Education
HR Managers of Colleges of Further Education
Department for Employment and Learning
UCU
NASUWT

FURTHER EDUCATION LECTURERS' NEGOTIATING COMMITTEE

Maternity Leave Scheme for Employees in Colleges of Further Education

In accordance with the provisions of Article 11, Schedule 3, paragraph 10.3 of the Further Education (Northern Ireland) Order 1997, the Constitution for Negotiating the Terms, Conditions of Service and Remuneration of Lecturers' Employed in Colleges of Further Education, it has been determined that the Maternity Leave Scheme for Employees in Colleges of Further Education has been agreed at the Lecturers' Negotiating Committee on 11 May 2011 and will be effective immediately.



Bertie Faulkner
Chairman
College Employers' Forum

**MATERNITY LEAVE SCHEME
FOR EMPLOYEES IN COLLEGES
OF FURTHER EDUCATION**

11 May 2011

MATERNITY LEAVE SCHEME

This scheme applies to staff whose Conditions of Service are negotiated through the Lecturers' Negotiating Committee.

1. Introduction

- 1.1 The college recognises the need for an effective maternity leave scheme, which plays a key part in supporting an appropriate work-life balance.

2. Scope

- 2.1 This scheme describes maternity rights, entitlements and obligations for all female employees at the college who are pregnant with an expected week of childbirth (EWC) on or after 1 April 2007.

3. To Whom This Scheme Applies

- 3.1 All employees, regardless of length of service and number of hours worked, have the right to statutory maternity leave provided that the conditions set out in this scheme are satisfied.

MATERNITY LEAVE SCHEME FOR EMPLOYEES IN INSTITUTIONS OF FURTHER EDUCATION

4. ENTITLEMENT

Qualifying Service	Entitlement to Leave	Entitlement to Pay
Less than 26 weeks' service before 15 th week before Expected Week of Childbirth (EWC)	<ul style="list-style-type: none"> • 26 weeks' Ordinary Maternity Leave; plus • 26 weeks' Additional Maternity Leave 	In most cases, Maternity Allowance for 39 weeks
26 weeks' or more continuous service before the 15 th week before Expected Week of Childbirth (EWC).	<ul style="list-style-type: none"> • 26 weeks' Ordinary Maternity Leave; plus • 26 weeks' Additional Maternity Leave 	Normally, Statutory Maternity Pay <ul style="list-style-type: none"> • 6 weeks at 90% of average weekly earnings or MA for employees not eligible for SMP. • 33 weeks at SMP or 90% of weekly earnings if this is less than the current SMP flat rate or MA for employees not eligible for SMP. • No pay for any remaining period of absence up to the date of return notified by the employee.
52 weeks' continuous service immediately prior to the beginning of the 11 th week before EWC.	<ul style="list-style-type: none"> • 26 weeks' Ordinary Maternity Leave; plus • 26 weeks' Additional Maternity Leave 	Occupational and Statutory Maternity Pay <ul style="list-style-type: none"> • 4 weeks @ full NP – full pay, offset against payments made by way of SMP or MA for employees not eligible for

		<p>SMP.</p> <ul style="list-style-type: none"> • 2 weeks @ 90% NP– 9/10ths of a week’s salary, offset against payments made by way of SMP or MA for employees not eligible for SMP. • 12 weeks @ 50% NP+ SMP. If the employee is also entitled to either SMP or MA she will be entitled to receive these payments in addition to half salary. There will be no deductions unless the combined half salary and SMP or MA exceeds full salary. • 21 weeks @ SMP. • No pay for any remaining period of absence up to the date of return notified by the employee.
	Notes	<ul style="list-style-type: none"> • NP = Normal Pay • SMP = Statutory Maternity Pay • Where figures are quoted at SMP or 50% NP + SMP, the rule applies that it is the lower of these figures OR 90% of the employee’s average weekly earnings that applies.

4.1 An employee will lose her right to receive SMP, if:

- a. she is taken into legal custody
- b. she starts work for another employer following the birth of the baby
- c. she returns to work (excluding circumstances when a “keeping in touch day” is undertaken under section 11)

5. Initial Obligations on the Employee

5.1 To benefit from the scheme the employee must:

- a. continue to be employed by a college (whether or not at work) immediately before the start of her absence;
- b. notify the [HR Department] in writing using the maternity leave application form by the end of the 15th week before the EWC or as soon as is reasonably practicable but giving no less than 28 days notice:
 - i. that she is pregnant;
 - ii. of her EWC, by means of a medical certificate (MATB1 form) from a registered medical practitioner or a certified midwife stating the EWC; and
 - iii. when she wishes her maternity leave to start.
- c. declare in writing at the time of notification of her intended absence under paragraph 3.1.b. that she intends to return to her job (if that is her intention and if she is able to return to that job);
- d. not remain at work if certified medically unfit to do so (taking into account the provisions of the appropriate Health and Safety legislation).

5.2 An employee may change the date on which she wishes her leave to commence provided she gives at least 28 days notice, unless this is not reasonably practicable.

6. Initial Obligations on the Employer

6.1 Within 28 days of the date on which the [HR Department] received the maternity leave application form, the college will ensure that the employee is notified in writing of her expected date of return from maternity leave.

7. Rights of the Employee to Maternity Leave

7.1 All employees, irrespective of length of service, are entitled to 26 weeks OML followed by 26 weeks AML, making a total of up to 52 weeks maternity leave.

7.2 An employee will not be allowed to commence their absence earlier than 11 weeks before the EWC

7.3 An employee will not be permitted to return to work earlier than two weeks after the day of childbirth.

7.4 The basic principle of the leave provisions is that employees have a right to choose the day on which they wish to start their maternity leave. The exceptions are:

- i. where the employee is absent from work following the beginning of the fourth week before the EWC because of a pregnancy related illness, the maternity leave period starts automatically on the day after the first day of absence; and
- ii. where the baby is born before maternity leave commences. In these circumstances, the date of childbirth should be regarded as the first day of maternity leave.

8. Maternity Pay

Statutory Maternity Pay/Maternity Allowance

8.1 An employee who has less than 52 weeks' continuous service as an employee with a college at the beginning of the 11th week before the EWC shall only receive any entitlement to Statutory Maternity Pay (SMP) or Maternity Allowance (MA). Please refer to Entitlements Table at Section 4.

8.2 An employee will be eligible to receive statutory maternity pay (SMP) if she satisfies the following criteria:

- She must have completed 26 weeks' continuous service at the 15th week before the expected week of childbirth; and
- She must be earning an amount equivalent to at least the lower earnings limit for National Insurance contributions; and
- She must still be pregnant at the 11th week before the expected week of childbirth; and
- She must have stopped work wholly or partly because of her pregnancy, or childbirth.

8.3 In summary, SMP is paid as follows:

- 6 weeks at 90% of average weekly earnings
- 33 weeks at SMP or 90% of weekly earnings if this is less than the current SMP flat rate
- No pay for any remaining period of absence up to the date of return notified by the employee.

8.4 Not all employees will be eligible for SMP, in which case employees should apply to Incapacity Benefits Branch or local Social Security Office, to see whether they may be entitled to maternity allowance.

Occupational Maternity Pay

8.5 An employee who has completed not less than 52 weeks' continuous service as an employee with a college at the beginning of the 11th week before the EWC and satisfies the criteria in Paragraph 8.2 shall receive occupational

maternity pay on the condition that she will be available, or able, to return to work for the required period specified in Paragraph 8.7.

8.6 Occupational maternity pay is paid in addition to the SMP. In summary, OMP is paid as follows:

- 4 weeks @ full NP – full pay, offset against payments made by way of SMP or MA for employees not eligible for SMP
- 2 weeks @ 90% NP– 9/10ths of a week's salary, offset against payments made by way of SMP or MA for employees not eligible for SMP
- 12 weeks @ 50% NP+ SMP. If the employee is also entitled to either SMP or MA she will be entitled to receive these payments in addition to half salary. There will be no deductions unless the combined half salary and SMP or MA exceeds full salary
- 21 weeks @ SMP
- No pay for any remaining period of absence up to the date of return notified by the employee.

8.7 Any employee who does not return to work for a period of at least 13 weeks service following her maternity leave can be required to repay the occupational element of maternity pay. This equates to 4 weeks at 10% (in respect of weeks 1-4) and 12 weeks at 50% (in respect of weeks 7-18), or lesser amount if applicable, to be determined by the College. She cannot be required to repay any of the SMP. An employee, who is uncertain about her return to work, may elect to have the 16 weeks pay reduced accordingly and paid to her on her return to work'.

9 Return to Work

9.1 It should be presumed that the employee will take her full statutory maternity leave entitlement, i.e. the full 52 weeks, unless she notifies the college of her intention to return early in accordance with Paragraph 10.1. The employee can simply turn up to work on the first working day at the end of AML.

9.2 From 3 April 2011, Additional Paternity Leave (APL) is available to eligible employees (usually fathers) to take up to 26 weeks' leave to care for their new child, possibly with additional statutory paternity pay. This leave and pay is only available to qualifying employees if the mother has returned to work and has an element of her Statutory Maternity Leave left untaken. Details can be found in the College Paternity Leave Scheme.

9.3 An employee who returns during or at the end of the first 26 weeks (ordinary maternity leave) is entitled to return to the same job on the terms and conditions as if she hadn't been away. If an employee takes more than 26 weeks (additional maternity leave) she is entitled to return to the same job on the same terms and conditions. If that isn't reasonably practicable she is

entitled to return to a suitable job on terms and conditions at least as good as her previous job.

- 9.4 Where it is not practicable by reason of redundancy to permit her to return to work in her job as defined in sub-paragraph 9.2, the employee shall be 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.

10. Notification of Early Return to Work

- 10.1 It is assumed that an employee will return to work on the date specified on the maternity leave application form.
- 10.2 In circumstances where an employee wishes to return to work before or after the specified date, whether from ordinary or additional maternity leave, she shall notify the college in writing, at least 8 weeks before the day on which she proposes to return, of the date of her intended return. Where this notification is not given, the college can postpone her return for a period of up to 8 weeks, or until the end of her 52 weeks if this is sooner.
- 10.3 Where an employee proposes to return to work before the end of 26 weeks' ordinary maternity leave she must submit a fit to resume certificate from her General Practitioner at least one working day before commencement of duties.

11. Keeping in touch days (KIT's)

- 11.1 Up to 10 "keep in touch" days may be undertaken during the maternity leave period without bringing the woman's maternity leave to an end. KIT's should not be scheduled during the 2 weeks immediately after childbirth (i.e. the compulsory maternity leave period).
- 11.2 A "keep in touch" day may be used to enable the employee to attend work without losing her right to SMP or contractual maternity pay.
- 11.3 There should be no pressure on employees to come into work. There is no obligation on an employee to undertake work, nor is there any obligation on the college to provide work. Any Keeping in Touch day worked by agreement with the employee and College will be paid normal pay and conditions abated by statutory/occupational maternity pay payable.
- 11.4 If a KIT day is agreed, the purpose should be agreed in advance so that both parties are clear what the employee will actually do. This can include training, a meeting or other activities to help the employee keep in touch.

12. Other Contact While on Maternity Leave

12.1 The college is entitled to maintain reasonable contact with the employee during the maternity leave period should circumstances make this necessary. This entitlement is separate from the keeping in touch arrangements described in section 11 above, and may be necessary to communicate and consult with the employee about issues relevant to her employment. For example:

- To communicate important news about the college or update the employee on any developments which have occurred during her absence;
- To keep the employee advised of any changes that may arise which could affect her job, such as mergers, restructuring or job evaluation; and
- To discuss and plan the employee's return to work.

12.2 Communication may take the form of a staff newsletter, HR bulletin, individual letter, e-mail or telephone contact.

12.3 Both parties should attempt to discuss/agree the likely approach prior to the commencement of maternity leave.

13. Ante-natal Care

A pregnant employee is entitled to take reasonable paid time off for antenatal care appointments made on the advice of a registered medical practitioner. Wherever possible, she should arrange her appointments at the start or end of her working day. Apart from the first appointment, evidence of appointments must be provided to the line manager upon request.

14. Protection of New and Expectant Mothers

The college is committed to creating and maintaining a healthy and safe working environment. This is particularly important in relation to the safety of new and expectant mothers. As part of the normal health and safety practices the college will risk assess work areas. In addition the college will undertake the following in order to create a healthy workplace for new and expectant mothers:

- Work areas will be risk assessed to take account of particular risks to new and expectant mothers. This will be carried out as soon as possible after notification of pregnancy.
- Employees will have the right to transfer from hazardous work areas, or hazardous work, without loss of pay or status, to suitable alternative work and/or alter hours/ work conditions if suitable actions can not be identified to avoid an assessed risk.

If in the early months of pregnancy an employee is advised by an approved medical practitioner to absent herself from the college 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 campus where there is no such undue risk.

15. Relationship with Sickness

- 15.1 Where an employee is sick during the paid ordinary maternity leave period the provisions of the Maternity Scheme shall continue to apply. In this case statutory sick pay and occupational sick pay are not payable.
- 15.2 Where an employee is unable to return to work at the end of the maternity leave period due to sickness, the provisions of the sick pay and occupational sick pay scheme shall apply to such absence.
- 15.3 Maternity leave will not be taken into account for the calculation of the period of entitlement to sickness leave.

16 Other Provisions

- 16.1 A period of maternity leave shall not be discounted in any reckoning of experience to which the employee may be entitled.
- 16.2 During the period of maternity leave (both ordinary and additional maternity leave) contractual benefits such as annual leave accrual will continue, as if the employee is at work.
- 16.3 If an employee is awarded a pay increase between the beginning of the original calculation period and the end of her period of statutory maternity leave, her normal weekly earnings for the purposes of calculating entitlement to SMP will be recalculated. The employee will be paid retrospectively for any difference between the SMP already paid and the amount payable as a result of the pay increase.

Pension Provisions

- 16.4 Where an employee's contributable salary is reduced due to maternity leave, the employee's contributions are based on the reduced rate of salary paid. Employer contributions during such a period of leave are paid on a rate of pensionable pay as if no reduction has been made.
- 16.5 If an employee chooses not to pay contributions during unpaid leave, that period will not count as reckonable for pension purposes. Any queries regarding contributions during a period of unpaid leave for pension purposes should contact the relevant pension provider as detailed below.
- 16.6 Any enquiries regarding an employee's pension position should be made to Teachers' Pensions Branch (Tel: 028 7131 9000) or NILGOSC (Tel: 028 9076 8025).

17. Protection from Detriment and Dismissal

- 17.1 Employees will be protected from suffering detriment or unfair dismissal for reasons related to taking, or seeking to take, maternity leave. Employees who believe they have been treated unfairly may invoke the appropriate College Procedure.

18. Definitions

- 18.1 For the purpose of this scheme, **a week's pay** shall be treated as the amount payable to the employee under the current 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 shall be treated as a week's salary.
- 18.2 **Childbirth** means the birth of a living child, or the birth of a child whether living or stillborn after 24 weeks of pregnancy.
- 18.3 In the unfortunate event of a stillbirth, the employee continues to be entitled to SMP and maternity leave, if the child is born after the 24th week of pregnancy. She will also be entitled to the maternity leave period. In the event of a miscarriage during or before the 24th week of pregnancy, the provisions and regulations of the sick pay scheme will apply.

19. Further Advice/Enquiries

- 19.1 Full guidance on maternity rights is available in the booklet Maternity Rights – a guide for employers and employees (ER16) which is available to download from the Employment Rights page on the DEL website www.delni.gov.uk
- 19.2 Full details of the Statutory Maternity Pay (SMP) and Maternity Allowance (MA) provisions can be found in the leaflet NIL17 "A Guide to Maternity Benefits" which is available from your local Social Security Office or at www.ssani.gov.uk
- 19.3 Any enquiries regarding this Scheme should be made to the college's Human Resources/Personnel Department.