

Factsheet for parents

Childcare during maternity leave: employer-supported childcare and the childcare element of Working Tax Credit

This factsheet contains information for parents about the help they can get with childcare costs during maternity leave.

First we look at how they will be affected by new legislation (see below) which will increase the length of time employers must provide non-cash benefits, for example childcare vouchers, to an employee on maternity leave whose baby is due on or after 5 October 2008. Then we look at the childcare element of Working Tax Credit and how entitlement is affected by maternity leave.

For more information about employer-supported childcare, see our factsheets for parents and employers at www.daycaretrust.org.uk

The Legislation

The Sex Discrimination Act
1975 (Amendments)
Regulations 2008

The Maternity and Parental
Leave etc and the Paternity
and Adoption Leave
(Amendment) Regulations
2008

Although this factsheet refers to childcare vouchers, the same entitlements also apply to other forms of employer-supported childcare – including directly-contracted childcare and workplace nurseries – during maternity leave.

In this factsheet we refer to maternity leave, but the same changes also apply to parents taking adoption leave. Rights to receive childcare vouchers and other non-cash benefits were extended to additional adoption leave for all placements made on or after 5 October 2008.

Employer-supported childcare

Many employers now offer childcare vouchers to their employees, sometimes as an addition to salary, but more commonly as a salary sacrifice. These vouchers are classed as 'non-cash benefits' and for all employees whose baby was due on or after 5 October 2008, must continue to be paid throughout maternity leave (both ordinary maternity leave – weeks 1-26 – and additional maternity leave – weeks 27-52).

Can my employer deduct the amount of my childcare vouchers from my maternity pay?

If you receive childcare vouchers as a salary sacrifice, your employer cannot deduct the amount of the vouchers from your Statutory Maternity Pay; they must pay SMP in full for 39 weeks.

If you are entitled to extra (contractual) maternity pay, your employer can continue to apply the agreed salary sacrifice during maternity leave – check your contract or salary sacrifice agreement.

Even if you don't have any salary to sacrifice, your employer should still continue to give you childcare vouchers. If this is the case, your employer is responsible for the cost of the vouchers.

For example, if your contract says that you will be paid your full salary for the first 13 weeks, during this time your employer should pay you:

- Your full salary (at the reduced rate agreed when you joined the salary sacrifice scheme) + childcare vouchers in weeks 1-13
- Statutory Maternity Pay of £123.06 + childcare vouchers in weeks 14-39
- Childcare vouchers only in weeks 40-52

Will I be better off staying in the childcare voucher scheme during my maternity leave?

The amount of Statutory Maternity Pay (SMP) you receive is based on your taxable salary. This means that if you choose to receive childcare vouchers as a salary sacrifice, you are reducing your taxable pay, so the amount of SMP you receive could be lower.

SMP pays 90% of your average earnings for the first six weeks. For the remaining 33 weeks, you will receive either 90% of your average earnings or £123.06 per week – whichever is the lesser amount.

Check your employer's terms and conditions to see whether you can opt in and out of the salary sacrifice scheme. You may not be able to rejoin the scheme immediately, so leaving your salary sacrifice scheme may mean that you have to wait until you return to work before you can get childcare vouchers again – check your company's policy.

If your scheme does not allow you to opt out and back in to the scheme in this way, you will need to consider whether you will be better off:

- staying in a salary sacrifice scheme and receiving (a) lower Statutory Maternity Pay and (b) continuing to receive childcare vouchers (in addition to your Statutory Maternity Pay) for up to 52 weeks; or
- leaving the salary sacrifice scheme prior to the qualifying period for Statutory Maternity Pay (approximately weeks 18-26 of your pregnancy) in order to receive more Statutory Maternity Pay.

You may qualify for Working Tax Credit to help with your childcare costs during your maternity leave, but see below for restrictions.

What can I do if I have problems joining or continuing in a voucher scheme before/during my maternity leave?

If you have problems joining a scheme, are told you must leave a scheme or your employer is threatening to withdraw a scheme at your workplace, you should seek specialist legal advice as you may have a discrimination case against your employer. The payment of childcare vouchers during maternity leave is a complex area of law, and there can be time limits for taking action so it is important to seek advice as soon as you can.

For further guidance about your employment rights, contact Working Families on **0800 013 0313**, or visit their website at **www.workingfamilies.org.uk**

To find legal advice you could also:

- contact your workplace union rep
- contact your local Citizen's Advice Bureau; search for your nearest office at: www.citizensadvice.org.uk
- search Community Legal Advice's online directory at www.clsdirect.org.uk or call them on 0845 345 4345

For more information about childcare vouchers and tax credits, use the online checker at **www.hmrc.gov.uk/calcs/ccin.htm**

The childcare element of Working Tax Credit

For more information about Working Tax Credit, including the childcare element, and who can claim see our 'Help with childcare costs for working parents' factsheet or go to www.payingforchildcare.org.uk.

Can I get the childcare element of Working Tax Credit during my maternity leave?

One of the qualifying conditions for Working Tax Credit is that you must be working for at least 16 hours per week. To qualify for the childcare element, if you are in a couple, both you and your partner must work for at least 16 hours per week.

Whilst you are on maternity leave, you may still be able to get Working Tax Credit even though you are not working. This is because you can be treated as if you are working if: you worked at least 16 hours a week immediately before your leave started and you are within one of the following periods:

- the Statutory Maternity Pay period (39 weeks)
- the Maternity Allowance pay period (39 weeks)
- ordinary maternity leave and the first 13 weeks of additional maternity leave

This means that for the first 39 weeks of maternity leave, you can continue to claim Working Tax Credit. If you are a lone parent or your partner works at least 16 hours a week, you could

also qualify for the childcare element. Tax credits will ignore the value of Maternity Allowance and £100 of your Statutory Maternity Pay when they look at your income, so you may be able to increase your tax credits award during maternity leave.

What happens during the last 13 weeks of additional maternity leave?

If you take the full 52 weeks maternity leave, you will not be treated as working for the last 13 weeks of your leave, so you will not be entitled to the childcare element of Working Tax Credit during this period. If your partner works at least 16 hours a week, you could still qualify for Working Tax Credit in this period, but you will not qualify for the childcare element.

Note though, that Working Tax Credit can continue to be paid for up to four weeks if a period of unpaid leave is expected to last up to four weeks.

Make sure you report the change of circumstances to the Tax Credit office so that you are not overpaid.

For example, Mary is a lone parent who works 28 hours per week and gets the childcare element of Working Tax Credit to help with the childcare costs for her first child. When she starts her maternity leave, she is still treated as if she is working her normal hours, and so continues to receive the childcare element. If;

- At the end of her 39 weeks' paid leave, Mary tells HMRC that she will be taking 4 weeks' unpaid leave and then returning to work. She continues to get the childcare element.
- At the end of her 39 weeks' paid leave, she tells HMRC that she will be taking 13 weeks unpaid leave before returning to work. Her childcare element stops at the end of her 39th week of maternity leave. She must inform HMRC when she returns to work and let them know how much her childcare costs are.

For more information about tax credits or to make a claim, call the Tax Credits helpline on **0856 300 3900** or go to **www.hmrc.gov.uk/taxcredits/index.htm**

Daycare Trust is the National Childcare Campaign. We have been working since 1986 to promote high quality affordable childcare for all.

If you have any questions about the information provided in this factsheet, or other questions about childcare, Daycare Trust's Information Line is available on **0845 872 6251**, alternatively you can email **info@daycaretrust.org.uk**. You can also access information on our website, **www.daycaretrust.org.uk** or **www.payingforchildcare.org.uk**.

The information in this factsheet refers to childcare in England. However, much of the information will be relevant throughout the UK. For further information specific to your area, contact your local information service in Northern Ireland, Scotland, or Wales via ChildcareLink on 0800 234 6346, **www.childcarelink.gov.uk**.

The information contained in this factsheet provides general information only and was accurate at the time of publication. This information is not to be taken as legal advice. You are advised to seek independent advice if you need further assistance.