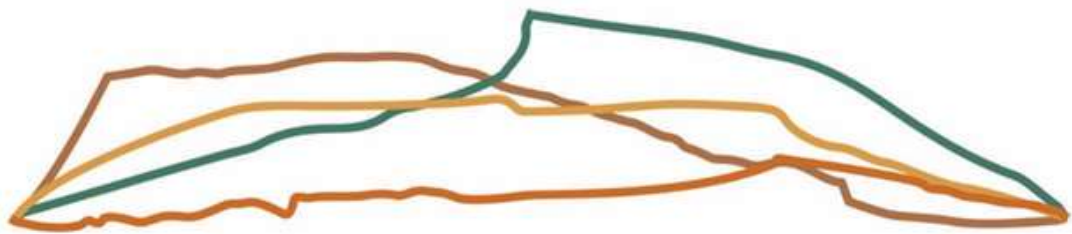


# Maternity Leave Policy for all academy based staff



**IRONSTONE ACADEMY TRUST**

Adopted By : IAT  
Date : January 2019

Review Date	Type of Review	Comments
01.08.2015	HR	Policy update regarding Additional Paternity Leave and Pay – see 5.1
<b>01.01.19</b>		<b>Reviewed and Updated</b>

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## 1.0 OVERVIEW

- 1.1 This policy has been developed to provide Headteachers and employees clear guidance on procedures and legal requirements prior to, during and following maternity leave.
- 1.2 All pregnant employees will be entitled to receive maternity benefits in accordance with the scheme below.

## 2.0 MATERNITY LEAVE AND PAY

- 2.1 Maternity leave can start no earlier than 11 weeks before the Expected Week of Childbirth (EWC), or the date of childbirth if that is earlier. The latest date maternity leave can commence is the day of childbirth itself. An employee may take up to 52 weeks maternity leave (comprising of 26 weeks Ordinary Maternity Leave, followed by 26 weeks Additional Maternity Leave).
- 2.2 In the case of the baby dying soon after birth or if the employee has a stillbirth/miscarriage or termination after the start of the 24<sup>th</sup> week of pregnancy, the employee will have the same rights to pay and leave and protection from discrimination or dismissal as if the baby had been born alive. Prior to the 24<sup>th</sup> week of pregnancy, there is no right to maternity leave or pay and the academy's normal sickness procedures will apply.
- 2.3 An employee is not allowed to return to work from maternity leave **within 2 weeks of childbirth.**
- 2.4 Entitlement to Statutory Maternity Pay (SMP) is determined by length of service at the 15<sup>th</sup> week (Qualifying Week) before the Expected Week of Childbirth (EWC). To receive SMP, an employee must:
  - a) still be employed by the academy immediately before the Qualifying Week
  - b) earn an amount equal or above the lower earnings limit for National Insurance averaged over an eight week period
  - c) still be pregnant at the 11th week before the EWC or already given birth
  - d) have followed the notification requirements (see 4.0)
  - e) have stopped working
  - f) not undertake any paid work, even casual work, other than 'keeping in touch days' (see 8.0) and
  - g) not be in legal custody at any time.
- 2.5 **The Headteacher must inform the employee before maternity leave commences that if points (f) and (g) above occur it will result in SMP ceasing.**
- 2.6 Entitlement to Occupational Maternity Pay (OMP) is determined by length of service at the 11th week (Qualifying Week) before the Expected Week of Childbirth. This is a weekly benefit that can be commenced on any day of the week.
- 2.7 Both Occupational and Statutory Maternity pay will be paid in accordance with the table at **Appendix One.**

- 2.8 All employees entitled to receive Occupational Maternity Pay must sign a declaration (see Maternity Leave Form HR005) to state that in the event she does not return to work for a period of at least 3 months, she will repay the non-statutory element of her maternity pay, i.e. the 12 weeks at half pay.
- 2.9 Employees on temporary or fixed term contracts will only have statutory maternity rights for as long as they remain employees. However, once an employee has qualified for SMP (by having 26 weeks service by the end of the 15th week before the EWC), she will be entitled to SMP if she subsequently resigns or is dismissed. Therefore a temporary or fixed term employee, whose employment comes to an end will lose their entitlement to occupational maternity pay but will retain the right to statutory maternity pay, if they had qualified for it.

### **3.0 SICKNESS DURING PREGNANCY**

- 3.1 Maternity leave will be triggered automatically if the employee is absent from work wholly or partly because of pregnancy or childbirth after the beginning of the 4th week before the EWC. Please contact Human Resources for further advice on whether an illness is to be regarded as pregnancy related.
- 3.2 Headteachers are advised to contact the employee to clarify their position and where appropriate, ask the employee to obtain a medical certificate. In the case of a dispute occurring, please contact Human Resources who will seek clarification from the academy's Occupational Health provider.

### **4.0 NOTIFICATION PROCEDURE**

- 4.1 To qualify for the full range of maternity benefits the employee must write to her Headteacher by the 15th week before the expected week of childbirth stating:
- the Expected Week of Childbirth (EWC)
  - Provide a copy of her MATB1 form – this is available when the employee is approximately 26 weeks pregnant.
  - the date the employee wants her maternity leave to start.
  - If she intends to return to work or not (see 2.8)
- 4.2 The Headteacher must respond to this notification within 28 days. This must be in writing setting out the date on which she is expected to return to work, should she have chosen to take her full entitlement of maternity leave.
- 4.3 The Headteacher must inform their payroll provider when the leave is due to start by completing **form HR005** with a copy of the MATB1 form. The Headteacher should also state if the employee is intending to return to work or not.
- 4.4 The employee may change the start of their leave, providing they give at least 28 days notice in writing to their Headteacher where reasonably practicable.
- 4.5 The Headteacher must inform their payroll provider of any changes to the initial maternity notification.

4.6 Although notification timescales are legislative it is asked that the employee informs the Headteacher as soon as practicable to ensure sufficient time to consider staffing and other pupil related changes.

## 5.0 ADDITIONAL PATERNITY LEAVE AND PAY

5.1 **Please Note: Additional Paternity Leave and Pay will no longer be available for babies due on or after 5<sup>th</sup> April 2015. This will be replaced by Shared Parental Leave. Please refer to Shared Parental Leave Policy for further information and guidance.**

5.2 Employees may transfer between a minimum of 2 and a maximum of 26 weeks of their Maternity Leave to their partner, to be taken as Additional Paternity Leave (APL). Taking of APL applies to the father of the child and partner or civil partner of the child's mother and is subject to satisfying the required criteria:

- APL to be taken only once the mother of the child has returned to work
- The mother must have been entitled to Maternity Leave
- APL can commence from 20 weeks after the baby is born and must end by 12 months after birth
- Details of eligibility are provided to the employer of the person taking APL
- APL can be a minimum of 2 consecutive weeks and a maximum of 26 consecutive weeks
- The father/partner/civil partner must have been continuously employed by the same employer for at least 26 weeks by the 15<sup>th</sup> week before EWC
- The father/partner/civil partner shall still be in the same employment until the week before APL commences
- The person taking APL must have responsibility for the upbringing of the child and the purpose for taking leave is to care for the child
- Both parties to meet the evidential and notice requirements to transfer and take the APL

5.3 Eligible employees may also be entitled to Additional Statutory Paternity Pay (ASPP). In addition to meeting the criteria to take APL, further conditions of ASPP include:

- The mother of the child was entitled to Statutory Maternity Pay or Maternity Allowance
- The mother has returned to work
- ASPP can only be paid during the mother's 39 week maternity pay period
- A father/partner/civil partner's earnings to be above the lower earnings limit for National Insurance for 8 weeks before the qualifying week (15<sup>th</sup> week before EWC)
- Both parties to meet the evidential and notice requirements to transfer and be paid the ASPP

5.4 If eligible for ASPP, employees will receive flat rate ASPP or 90% of their average weekly pay, whichever is lower. Further information on leave and pay can be found in the Paternity Leave Policy.

## 6.0 REQUEST TO TRANSFER APL/ASPP

6.1 An employee who wishes to request to transfer part of her Maternity Leave to the father of the child/partner/civil partner must:

- Give the required notice of a return to work (see 7.4)
- At least 8 weeks before the expected APL start date, the employee (mother of the child) must provide a written and signed declaration to the employer of the father/partner/civil partner
- The following detail must be included in the declaration:
  - Employee's (mother of the child) name, address and National Insurance Number
  - Confirm notice has been given to the Headteacher of a return to work and the date of return
  - Any entitlement to SMP or MA and the start date of the maternity pay period
  - Confirm that father/partner/civil partner is the sole applicant for APL/ASPP
  - Confirm that the father/partner/civil partner has responsibility for the upbringing of the child
  - Give consent to the father/partner/civil partner's employer to process the declaration

6.2 Employees should be aware that the father/partner/civil partner may have to provide the child's birth certificate and name and address of the academy to their employer. If so, this information should be requested by the partner's employer within 28 days of receipt of the letter of declaration and should be provided by the mother within 28 days of request.

## 7.0 RETURNING TO WORK

7.1 Employees on a temporary or fixed term contract do not have a right to return to work unless the end of the contract is a date following the end of the maternity leave period. See also 2.9 for further details.

7.2 An employee who returns to work after Ordinary Maternity Leave (up to 26 weeks) is entitled to return to the same job on the same terms and conditions as if she had not been absent, unless a redundancy situation has arisen.

7.3 An employee who returns to work after Additional Maternity Leave (more than 26 weeks) is also normally entitled to return to the same job on the same terms and conditions as if she had not been absent, unless a redundancy situation has arisen. However, if there is a reason other than redundancy, which means that it is not reasonably practicable for her employer to take her back to the same job, she is entitled to be offered suitable alternative work.

7.4 Employees do not need to give advance notice if they are intending to return to work immediately after the period of Ordinary Maternity Leave and Additional Maternity Leave (52 weeks). However, if an employee wishes to return to work **before the end of this period** she must inform her Headteacher in writing at least 21 days before her intended return date.

- 7.5 If she fails to give the appropriate notice the Headteacher may postpone her return for up to 21 days as long as this does not exceed the 52 week period.
- 7.6 If an employee does not fulfil her obligation to return to work at the end of her maternity leave on either a full or part time basis for a period of at least 3 months, she will be required to **refund** any non-statutory maternity pay that she may have received (12 weeks at half pay). If an employee returns to work on less hours than she worked before the start of her maternity leave she will not have to repay occupational maternity pay, as long as she works for at least 3 months from the date of her return.
- 7.7 If there are extenuating circumstances as to why she has not returned to work for the specified period, an amount less than 100% of the 12 weeks half pay may be recovered. In such a case, the Headteacher should consult with Human Resources.
- 7.8 **IN ALL CASES** Employee Services must be notified via email of the employee's return to work date.

## **8.0 KEEPING IN TOUCH DAYS**

- 8.1 An employee on maternity leave may agree with her Headteacher to carry out up to 10 days' work, whether consecutive or not, **without bringing the maternity leave period to an end**. These days are known as 'keeping in touch' (KIT) days. What ever period of time an employee works on a KIT day it will be classed as a full day for the purposes of working a maximum of 10 however they will only be paid for the hours worked. Therefore for the purposes of this entitlement, any work carried out on any day shall constitute one day's work.
- 8.2 KIT days cannot be taken in the two-week compulsory maternity leave period.
- 8.3 Work in this context includes training or any other activity to assist the employee in keeping in touch with the workplace. Any days that are worked do not have the effect of extending the total duration of the leave period. Furthermore, Statutory Maternity Pay (SMP) is not affected and will continue to be paid.
- 8.4 SMP will continue to be paid for the week in which any KIT day(s) is undertaken by the employee. Payment will be made for each hour the employee works, at the employee's normal hourly rate of pay, in addition to any maternity pay received.
- 8.5 Such work may be carried out **only following agreement** between the Headteacher and the employee. There is no right for the employer to provide 10 days' work, or for an employee to do such work.
- 8.6 Employers are entitled to make reasonable contact with an employee while they are on maternity leave.

## **9.0 PENSION DEDUCTIONS DURING MATERNITY LEAVE**

- 9.1 Pension deductions will automatically be deducted from both Occupational and Statutory Maternity Pay. Once maternity pay is exhausted, pension deductions will stop. This is applicable to both members of the Local Government Pension Scheme (LGPS) and the Teachers' Pension Scheme (TPS).
- 9.2 For members of the LGPS, employees may elect to pay contributions for any unpaid periods of leave. Employees who wish to purchase the amount of lost pension and make the election within 30 days of returning to work then the cost of the Additional Pension Contribution (APC) is split between the employee and employer. The employer will pay 2/3rds of the cost, this is known as a Shared Cost Additional Pension Contribution (SCAPC). Employees can obtain a quote and print off an application form to buy **lost** pension at [www.lgps2014.org](http://www.lgps2014.org).
- 9.3 If the employee chooses to pay back pension contributions, they will need to forward the application form to buy lost pension to their payroll provider who will make the appropriate deductions and will forward to the Pensions Section for record to be updated. If the employee chooses not to pay back the pension contributions, then the unpaid service will not count for pension purposes.
- 9.4 For members of the Teachers' Pension Scheme any period of unpaid leave will not count towards reckonable service for pension purposes.
- 9.5 If the employee does not return to work then they will be regarded as having left the Local Government Pension Scheme / Teachers Pension Scheme on the date that pay ceased, unless for LGPS members the employee has agreed to pay for the period up to the actual leave date.

## **10.0 HEALTH AND SAFETY**

- 10.1 Under the Management of Health and Safety at Work Regulations 1999, where persons working in an undertaking include women of childbearing age, **and** the work is of a kind which could involve risk, by reason of her condition to the health and safety of a new or expectant mother, or to that of her baby, the risk assessment must also include an assessment of such risk.
- 10.2 This is a proactive requirement and risk must be assessed when carrying out the general risk assessment, rather than in response to an employee becoming pregnant.
- 10.3 The risk assessment should consider the following, and measures should be determined to reduce the risk:
- expectant mothers.
  - employees who have recently given birth.
  - breast feeding mothers.
- 10.4 Further help and advice is available from Mouchel, Health & Safety Unit on telephone number 727414.



- 10.5 If the assessment does reveal a risk, the risk assessor and/or the Headteacher should inform female employees about the potential risks if they are, or could in the future be pregnant or breastfeeding.
- 10.6 The manager should also explain what they would do to make sure that new and expectant mothers are not exposed to the risks that could cause them harm.
- 10.7 At the point at which an employee informs her Headteacher of her pregnancy, or when it otherwise becomes clear that the employee is pregnant, those measures identified to eliminate or control the risk to her must be implemented.

## **11.0 AVOIDING RISKS AND HAZARDS IN THE WORKPLACE**

- 11.1 In all cases the Headteacher, in consultation with the risk assessor should consider removing the hazard or seek to prevent exposure to the risk.
- 11.2 Where this is not feasible the risk should be controlled.
- 11.3 If there is still a significant risk at work to the safety or health of a new or expectant mother then the Headteacher must take the following steps to remove her from the risk:
- temporarily adjust her working conditions and/or hours of work.

If it is not reasonable to do so, or would not avoid the risk, then:

- redeploy the employee on existing terms and conditions within the establishment. If this is not possible, consideration should be given to redeployment to another area of work. Contact Human Resources for advice.
- 11.4 If the steps above are not appropriate, it may become necessary to grant paid leave of absence to the employee. This leave of absence can apply before and after maternity leave. In such cases, maternity leave is activated at the 4th week before the EWC.
- 11.5 For further information contact Mouchel, Health & Safety Unit or Human Resources.

## **12.0 ANTENATAL AND OTHER RELATED APPOINTMENTS**

- 12.1 All pregnant employees have the right to reasonable paid time off to attend antenatal appointments. Reasonable time off to attend relaxation and parentcraft classes when the appointment has been made on the advice of a registered midwife, doctor or health visitor will be given. Headteachers may ask employees to produce evidence of such appointments.

## **13.0 SICKNESS FOLLOWING MATERNITY LEAVE**

- 13.1 Where an employee has notified the academy of her intended date of return and then submits a fit note indicating that she is unfit for work on that day, she is deemed to have ended maternity leave as if she had returned to work. If the employee is absent on certified sick leave for at least 3 months and then tenders

her resignation, she retains her entitlement to 12 weeks' half-pay. If the employee submits her resignation prior to the completion of the 3 months the academy has discretion as to whether she should retain the 12 weeks' half pay. The Headteacher should contact Human Resources to discuss such situations.

- 13.2 The Headteacher should manage the employee's sickness in accordance with the academy's Managing Attendance Policy.

#### **14.0 ANNUAL LEAVE**

- 14.1 All employees are entitled to the minimum statutory annual leave for each financial year. Seek further advice from Human Resources for individual cases.

#### **15.0 PARENTAL LEAVE FOLLOWING MATERNITY LEAVE**

- 15.1 A period of unpaid Parental Leave taken immediately after maternity leave of 4 weeks or less does not have any effect on the employee's right to return. For further information contact Human Resources and refer to the Parental Leave policy.

- 15.2 Parental Leave should not be confused with Shared Parental Leave. The two rights are entirely separate.

#### **16.0 BREASTFEEDING MOTHERS**

- 16.1 Where possible the academy will make a room available for breastfeeding mothers to express milk. These special arrangements must be made with the Headteacher or other nominated person.

#### **17.0 EQUALITY STATEMENT**

- 17.1 The Equality Act 2010 makes it unlawful to discriminate, or treat employees unfavourably on the grounds of pregnancy, childbirth or maternity. The policy must be applied fairly to all employees irrespective of age, disability, gender reassignment, marriage and civil partnership, race, religion or belief, sex or sexual orientation.

## Appendix A

LENGTH OF SERVICE	MATERNITY PAY ENTITLEMENT
<b>Less than 1 year's continuous Service and less than 26 weeks service with current employer</b>	No entitlement to either SMP or OMP but may qualify for Maternity Allowance at the same rate of SMP. For details go to <a href="http://www.gov.uk/maternity-allowance">www.gov.uk/maternity-allowance</a>
<b>Less than 1 year's continuous Local Government Service and more than 26 weeks service with current employer</b>	Entitled to SMP but no entitlement to OMP. If eligible, SMP will be payable for 39 weeks.  Support Staff and Teachers are entitled to 6 weeks at 90% of their average pay <b>and then</b> 33 weeks at the flat rate SMP or 90% of earnings, whichever is lower.
<b>More than 1 year's continuous Local Government Service and less than 26 weeks service with current employer</b>	No entitlement to SMP but entitled to OMP. If eligible for OMP:  Support staff are entitled to 6 weeks at 90% of their average pay & Teachers are entitled to 4 weeks full pay followed by 2 weeks at 90% of average pay <b>and then</b> 12 weeks at 50% of a weeks pay (if the employee does not intend to return to work, they will not be entitled to 12 weeks half pay).  Employees may be eligible to 21 weeks Maternity Allowance making a total of 39 weeks. For details go to <a href="http://www.gov.uk/maternity-allowance">www.gov.uk/maternity-allowance</a>
<b>More than 1 year's continuous service with the academy and more than 26 weeks service with current employer</b>	Entitlement to SMP and OMP.  Support staff are entitled to 6 weeks at 90% of their average pay & Teachers are entitled to 4 weeks full pay followed by 2 weeks at 90% of average pay <b>and then</b> 12 weeks at 50% of a weeks pay plus flat rate SMP (this must not exceed full pay) then a further 21 weeks at lower rate SMP if the employee intends to return to work (39 weeks in total) <b>Or</b> 33 weeks at flat rate SMP rate if the employee is not intending to return to work (39 weeks in total).

**For SMP purposes, average pay is calculated from the pay that the employee received in the 2 months prior to the last pay day before the 15<sup>th</sup> week (qualifying week).**

**OMP is based on the pay detailed on the contract of employment in force during maternity leave. OMP will change if a pay award is implemented during the period.**