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**Maternity & Adoption – Additional Guidance Notes for Managers**

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# Essential reading for managers

Almost all the information managers require on maternity and adoption is covered in the following policies and procedures.

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| **Documentation** | **Details** |
| [Maternity Policy & Procedures](https://inside.barnardos.org.uk/people-and-culture/taking-time/maternity-leave-and-pay-policy) | Explains abbreviations used; the rights and entitlements of colleagues; notification requirements; maternity leave and pay; contact and working during maternity leave, return to work and the right to request flexible working. |
| [Maternity Leave Planner & Application Form](https://inside.barnardos.org.uk/people-and-culture/taking-time/maternity-leave-and-pay-policy) | Pregnant colleagues must complete this form for their managers no later than the 25th week of pregnancy (15th week before the week in which their baby is due). |
| [Adoption Policy & Procedures](https://inside.barnardos.org.uk/people-and-culture/taking-time/adoption-leave-and-pay-policy) | Explains abbreviations used; the rights and entitlements of colleagues; notification requirements; adoption leave and pay; contact and working during adoption leave, return to work and the right to request flexible working. |
| [Adoption Leave Planner and Application Form](https://inside.barnardos.org.uk/people-and-culture/taking-time/adoption-leave-and-pay-policy) | Adopters must complete this form for their managers within 7 days of being notified by the adoption agency that they have been matched |

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| **Documentation** | **Details** |
|  | with a child for adoption. |
| [Health & Safety Policy New and Expectant Mothers](https://contentserver.barnardos.org.uk/livelink91/livelink.exe?func=ll&objId=105959191&objAction=viewheader) | Corporate Safety Team Policy1 (see footnote 1)  Sets out responsibilities under health and safety legislation. |
| Guidance - [managing the health and safety of new and expectant mothers](https://contentserver.barnardos.org.uk/livelink91/livelink.exe?func=ll&objId=36275741&objAction=browse&viewType=1) | Corporate Safety Team Guidance *(see footnote 1)*  Detailed guidance for managers/supervisors and women of child-bearing age. |
| [Support Leave Policy & Procedure](https://inside.barnardos.org.uk/support-leave-policy) | Explains the right/entitlement of a colleague to paternity leave following the birth or adoption of a child and the long term fostering of a child. |

# Health & Safety (maternity)

Under health and safety legislation, if the job duties of a new or expectant mother2 are likely to cause harm to her, her child or her unborn child, steps must be take to reduce or remove the risks.

Employers are also required to provide suitable facilities for pregnant and breastfeeding mothers to rest. Where necessary these should include somewhere for the woman to lie down. In addition, the Health & Safety Executive recommends that it is good practice for employers provide ‘a private, healthy and safe environment for nursing mothers to express and store milk3 – this is not a legal requirement.

The actions managers must take are outlined below – for detailed guidance, managers should refer to the Corporate Safety Team’s Health & Safety [New and Expectant Mothers and Guidance](https://contentserver.barnardos.org.uk/livelink91/livelink.exe?func=ll&objId=36275741&objAction=browse&viewType=1) - managing the health and safety of new and expectant mothers.

* + Where women of child-bearing age are employed, the general risk assessments carried out by managers must take account of any specific risks to new and expectant mothers.
  + If risks are identified, managers must take steps to reduce or remove these if possible, inform workers of the risk and the need to notify the manager of pregnancy, birth or breastfeeding.
  + To encourage women to advise them as soon as possible of their pregnancy, managers must treat this notification as confidential4 (unless the expectant mother wishes otherwise) and ensure that by their actions expectant

1 Corporate Safety Team Policy & Guidance are available on [Content Server](http://livelink.barnardos.org.uk/otcs/llisapi.dll/open/11740515).

2 ‘New or expectant mother’ means a colleague who is pregnant, who has given birth in the previous six months, or who is breastfeeding. Health & Safety regulations define ‘given birth’ as ‘delivered a living child or, after 24 weeks of pregnancy, a stillborn child.

3 Toilets are not considered suitable for this purpose.

4 The expectant mother may choose not to confirm her pregnancy until she is 25 weeks into her pregnancy.

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mothers are reassured that they will not be treated detrimentally as a result of notifying pregnancy.

* + Once notified of pregnancy (or birth or breastfeeding), managers must carry out a specific risk assessment with the colleague concerned and determine any actions required. (The colleague has a general duty of care for her own safety, must be involved in the risk assessment process and must adhere to any agreed control measures.)
  + The purpose of this risk assessment is to prevent risks to the expectant or new mother, her child or unborn child, from work which would not usually produce such risk.
  + The findings of this risk assessment must be recorded, but can be communicated verbally to the colleague.
  + If the risk assessment identifies an unacceptable risk, the manager must take steps to eliminate this. Examples of potential control measures are included in the Corporate Safety Team’s guidance on managing the health and safety of new and expectant mothers.
  + If the risk cannot be avoided by other means, the manager must consider temporarily adjusting the colleague’s working conditions or hours of work.
  + If it is not reasonable to do this, or if doing so would not remove the risk, the colleague should be offered suitable alternative work if available. This may include different job responsibilities but must be at her usual rate of pay.
  + If no suitable alternative work is available the colleague should be put on fully-paid maternity suspension for as long as necessary. The manager must make it clear to the colleague that this ‘suspension' is not a punishment and is not part of any disciplinary procedure.5
  + These actions are only necessary where, as a result of the risk assessment, there is a genuine concern. If necessary managers should seek advice from their Local People Team and the Occupational Health service.
  + An expectant or new mother who produces a medical certificate which shows that her health and safety (or her child’s) is at risk if she continues with night work has a right to be offered suitable alternative daytime work on the same terms and conditions. If none is available, or if it is not reasonable to do this, she should be suspended from work, on paid leave, for the period identified in the certificate.

5 Maternity leave is automatically triggered if a colleague is on maternity suspension during the four weeks before the expected week of childbirth (EWC). Maternity suspension does not, therefore, apply during maternity leave.

# Reimbursement of statutory maternity pay (SMP) and statutory adoption pay (SAP)

Employers are reimbursed by the Government for 92% of SMP and 92% of SAP. (Barnardo’s enhances the first 6 weeks of SAP to bring it in line with SMP and this reimbursement applies to the Government scheme element only.)

# Salary exchange during maternity and adoption leave

See also Maternity policy and procedures, 2.13 Childcare vouchers salary exchange, 2.14 Cycle to work salary exchange and 2.16 Pension schemes.

Where a colleague has not stopped childcare vouchers during maternity or adoption leave, they are entitled to continue to receive these during the period of their leave. Salary exchange for the colleague’s childcare vouchers can only be deducted from Barnardo’s Maternity Pay (BMP) or Barnardo’s Adoption Pay (BAP) so this means that the service will have to meet the cost of the vouchers for the periods during maternity/adoption leave when the colleague is receiving SMP or SAP only, or no pay.

Colleagues cannot opt out of the cycle to work scheme and the same rules apply to their cycle payments.

Where a colleague has not opted out of BRSP salary exchange during maternity or adoption leave they are entitled to continue to receive the colleague contributions to their pension account during any period of Ordinary Maternity Leave (OML) or Ordinary Adoption Leave (OAL) and any period of paid Additional Maternity Leave6 (AML) or Additional Adoption Leave (AAL). The service will have to meet the cost of this.

Impact of salary exchange on the calculation of SMP: the amount of SMP due to the colleague is calculated based on their average weekly pay during a set period (described as the ‘relevant period’).

If a colleague is participating in salary exchange during the ‘relevant period’, this will impact on their SMP because under HMRC7 rules their reduced (pre- exchange) salary must be used for this calculation.

This means that, if a colleague does not stop childcare vouchers or opt out of pension scheme salary exchange for the ‘relevant period’ their entitlement for the first 6 weeks of SMP will be reduced. There is no opt-out available from the cycle to work scheme.

The Maternity Leave Planner & Application Form includes guidance for colleagues on how to identify their ‘relevant period’ to assist them to stop salary exchange at the appropriate time if they wish to do so.

Please note: the first 6 weeks of SAP is **not** affected by salary exchange in the same way as SMP. This is because employers are only required to pay SAP to eligible colleagues on adoption leave for up to 39 weeks at the rate set by the Government (currently £184.03 from 7 April 2024) or 90% of average weekly

6 Applies to women receiving Government MA as well as to those being paid SMP, and to payment for KiT days worked.

7 His Majesty’s Revenue and Customs

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earnings, whichever is the lesser. Barnardo’s supplements SAP for eligible colleagues to bring it in line with SMP, but as this is not part of the Government scheme, it can be treated the same way as Barnardo’s Adoption Pay (BAP) – see below.

The calculation of BMP and BAP is not affected by salary exchange as it is calculated on the colleague’s notional, pre-exchange salary.

For more information and/or clarification, contact your People Team.

# Colleague rights on return to work from maternity or adoption leave

Colleagues who are identified as at risk of redundancy through consultation and have notified their manager that they are pregnant or who are on maternity or adoption leave or returning from family leave, have the right to be offered any suitable alternative work available. For details see Q11 in the [Redundancy FAQ](https://barnardosorguk.sharepoint.com/:w:/s/Employeeandvolunteersupport/EQZm6FtUUJJKqkC-zTuuowUB22GZKRWOh4acUsX_UV0yXg?e=leur2o) document.

If problems relating to a colleague’s return to the same job are anticipated, managers must seek advice from their local People Team in the first instance.

# Dismissal (maternity & adoption)

To ensure good practice and that the law is observed, any manager considering the dismissal (including redundancy) of an expectant or new mother or adoptive parent (whether male or female) must involve the local People Team as soon as the issue arises.

Managers must be aware that the dismissal of a colleague will automatically be unfair, regardless of his/her length of service or hours of work, if:

* + It is on maternity/adoption related grounds and takes place during a colleague’s pregnancy or maternity/adoption leave period.
  + It is on the grounds that the colleague undertook, considered undertaking or refused to undertake work under the Keeping in Touch days arrangements.
  + It occurs after the end of the maternity/adoption leave period and is on the grounds that the colleague had taken or availed themselves of the benefits of that leave.
  + In maternity cases it is on the grounds of a health and safety provision that could give rise to medical suspension.
  + It is on the grounds of redundancy and Barnardo’s has not first complied with the requirement to offer any suitable alternative employment that is available.
  + The colleague is unfairly selected for redundancy for one of the above reasons.

A colleague dismissed at any time and for any reason while pregnant or during maternity/adoption leave is entitled to receive a written statement of the reasons for the dismissal without having to request it.

Colleagues also have the right not to suffer unfair treatment on the grounds of pregnancy, childbirth or maternity/adoption leave.

# Replacement colleague (maternity & adoption)

The appropriate budget holder (with the approval of their manager if this is required) may decide to employ temporary/fixed term replacement colleague. The temporary/fixed term contract must state that the reason for the engagement is to cover maternity/adoption leave and that it will cease on the return of the substantive post holder.

# Review

This policy will be reviewed by the People Strategy & Projects Team one year after implementation then at three yearly intervals.

Proposed changes will be subject to consultation with UNISON.

Statutory changes will be incorporated automatically and any legal or organisational developments may prompt more frequent reviews.

1. **Document history**

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| **Version** | **Date** | **Author** | **Status** | **Comment** |  |
| 1.0 | 06.04.24 | People Strategy & Projects Team |  | Update to include, new brand, SMP rate and reference to new redundancy protection legislation. |  |
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**Owner**

People Strategy & Projects Team

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