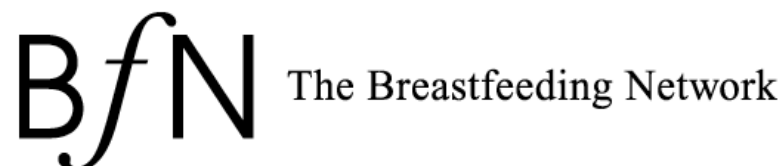


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Overview:

Breastfeeding and Returning to Work

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Legal rights at work for breastfeeding women

Although all women are now entitled to 26 weeks maternity leave (from 6 April 2003), there will still be mothers returning to work whilst they are breastfeeding. They may need information on their legal rights to help them to combine working and breastfeeding.

There is no direct legal right for women in the UK to have paid or unpaid breaks to breastfeed or express milk during working hours. Women in over 80 other countries world wide do have such a right.¹ The rights which UK women have come from Health and Safety legislation, and the Sex Discrimination Act.

Rights under Health and Safety legislation

Employers duty to assess risks to breastfeeding employees

Employers have a duty to assess workplace risks to the health and safety of their employees, and to do what is reasonably practicable to avoid these risks.² They also have a specific duty to assess and control risks to new and expectant mothers and their children. This includes any employee who is pregnant, has given birth within the last six months, or who is breastfeeding, together with employees' unborn babies and babies up to 6 months, and breastfed babies or children of any age.

Possible risks to health and safety of breastfeeding employees and their children

Potential hazards and risks to new and expectant mothers are listed in the Health and Safety Executive (HSE) guidance to employers, which is an important source of information for breastfeeding mothers and those supporting them.³ Risks include certain physical, biological and chemical agents and processes. There are also other working conditions which may be a risk to breastfeeding employees, including

- mental and physical fatigue due to long working hours, shift work and night work;
- lack of adequate and appropriate nutrition and liquid refreshment at regular intervals; and
- occupational stress.

In addition, **not breastfeeding may itself be a risk to the health of both mother and child.** The HSE Guidance says:

'Access to appropriate facilities for expressing and safely storing breast milk for breastfeeding mothers, or to enable infants to be breastfed at or near the workplace, may facilitate breastfeeding by working women, and may significantly protect the health of both mother and infant.'

Evidence shows that breastfeeding can help to protect the mother against cancer and helps protect the child from certain diseases in infancy. Obstacles to breastfeeding in the workplace may significantly affect the health of both mother and child.³ (p40)

The following protective measures are recommended to employers to overcome the risk of not breastfeeding:

¹ International Labour Office. Maternity Protection at Work: Revision of the Maternity Protection Convention (Revised), 1952 (No. 103), and Recommendation, 1952 (No. 95) Report V (1). Geneva: International Labour Office, 1997.

² Employment Rights Act, 1996 and The Management of Health and Safety at Work Regulations, 1999. SI 1999 No. 3242.

³ Health and Safety Executive. New and expectant mothers at work: a guide for employers. Sheffield, HSE Books, 2002. (HSG122). Second edition. £9.50. ISBN 0717625834. There are also free leaflets based on this publication for health professionals and mothers. See <http://www.hse.gov.uk/pubns/indg373hp.pdf> or contact HSE Information Centre, telephone 0114 2892345.

- 'access to a private room where women can breastfeed or express breast milk;
- use of secure, clean refrigerators for storing expressed breast milk while at work, and facilities for washing, sterilising and storing receptacles;
- time off (without loss of pay or benefits, and without fear of penalty) to express milk or breastfeed.'³ (p41)

Getting employers to consider health and safety risks

Employees should notify their employer in writing that they are breastfeeding if they wish to exercise their rights under Health and Safety legislation.

The risk assessment process

1. **A risk needs to be identified.** The employer is responsible for doing a risk assessment, taking account of possible hazards. It is probably a good idea for a breastfeeding employee to point out that 'not breastfeeding' is a risk to the health and safety of herself and her baby. HSE guidance on breastfeeding has recently been updated, following new European Commission guidelines, and employers may be unfamiliar with their responsibilities. Employees may want to give additional evidence about the health risks of not breastfeeding. Health professionals and breastfeeding supporters may be useful in providing this.⁴
2. **Once a risk is identified,** the employer will need to decide what action to take. It may be helpful if the mother provides information about the help she needs to allow her to continue breastfeeding. For example, how often might she need to express, and approximately how long might it take? Is there somewhere she can think of which might be suitable for expressing? (Suitable facilities for rest must be provided for breastfeeding mothers, so this place might be a possible place for expressing.⁵) Are there changes to her working hours which would mean she could avoid, or limit expressing at work, eg by working shorter hours for more days? Creativity and flexibility on both sides may be needed to find the best solution.
3. **If the risk cannot be removed or controlled,** an employer must temporarily adjust working conditions and/or hours of work to avoid the risk. For example if a room for expressing cannot be provided, the employer may need to offer longer, or more frequent breaks, so that the mother can leave work to feed her baby. Or the employer might provide a room where the baby could be fed at work.
4. **If temporary adjustment of working conditions is not possible,** suitable alternative work must be found. For example, where a midwife is working on the labour ward where regular breaks of a certain length cannot be arranged, she might be transferred to antenatal clinic duties where hours are more regular.
5. **If suitable alternative work cannot be found,** the employee must be given paid leave for as long as is necessary to protect her or her child. The Maternity Alliance, which advises mothers, says that 'no-one ever gets this far'.⁶

Night work

In the case of night work, if an employee who is pregnant or a new mother has a medical certificate saying that night work may affect her health or safety, alternative daytime work must be offered, or if that is not possible, she must be given paid leave.

⁴ The Baby Friendly Initiative website has a useful summary of research on health aspects of breastfeeding: <http://www.babyfriendly.org.uk/benefits.htm>

⁵ The Workplace (Health, Safety and Welfare) Regulations 1992. SI 1992 No.3004.

⁶ Having It All: A woman's guide to combining breastfeeding and working. (See above).

Enforcement

Health and safety legislation is enforced either by the Health and Safety Executive (for premises such as factories) or by the Environmental Health Officers at the local authority (for offices and shops). Officers have the power to visit workplaces and can issue improvement /prohibition notices. In practice it may be difficult to get them to do so, because they are often over stretched. But the 'threat' of contacting them may be helpful, and it may be appropriate to do so in practice in some circumstances.

Sex Discrimination Act 1975

Indirect sex discrimination

'Indirect sex discrimination is concerned with practices which have the effect of discriminating against women and which cannot be justified by the needs of the job'.⁷ It may be possible for a woman to claim indirect sex discrimination if her employer refuses to allow her to alter her working hours, eg by returning to work part-time or job sharing, to allow her to continue to breastfeed. The employer has to show some objective business reason why it is impossible for her job to be covered by part-timers or job sharers. In the case of *Squillaci v WS Atkins (Services) Ltd* ⁷, a tribunal found that a woman had suffered indirect sex discrimination when her employer refused to let her work part-time for six months. She wanted to work part-time so that she could continue breastfeeding for a year because her daughter suffered from eczema, and breastfeeding would protect her health.

In October 2003, the case of Mrs H Williams was widely, and inaccurately, reported in the press, under headlines such as 'Women lose the right to breastfeed at work'. Mrs Williams was a Ministry of Defence employee who won her employment tribunal case on the grounds that her employer's policy concerning breastfeeding was directly, or indirectly discriminatory under the Sex Discrimination Act. The Ministry of Defence appealed against the tribunal decision. In October 2003 an employment appeal tribunal decided that the part of her case that related to breastfeeding should be heard again by another tribunal, because the original tribunal had made an error of law in the way it approached the case. The rehearing has not yet been reported (February 2004).

Women thinking of using the Sex Discrimination Act are likely to need legal help.

⁷ Camilla Palmer. *Legal rights to child-friendly working hours: a practical guide to using sex discrimination law*. London: Maternity Alliance, 1998.

A Summary of Statutory Maternity and Parental Leave and Benefits

Maternity leave

There is a two week period of **compulsory maternity leave** from the date of birth when women are not permitted to work for an employer.⁸

Mothers of babies born on or after 6 April 2003 are entitled to 26 weeks **ordinary maternity leave (OML)**. From April 2003 any woman with 26 weeks service with her employer by the 15th week before the expected week of childbirth is also be entitled to 26 weeks **additional maternity leave (AML)** after OML, giving a maximum of 52 weeks leave entitlement.

Maternity benefit

Statutory Maternity Pay (SMP) is paid to women continuously employed with the same employer for at least 26 weeks up to and including the qualifying week (ie the 15th week before the baby is due). Employees must earn a minimum average of £79 per week to qualify. SMP is payable for 26 weeks. It is paid at 90% of average salary for the first 6 weeks, then at a basic rate of £102.80 per week (April 2004 – 2005) for the remaining 12 weeks or at 90% of previous earnings to those earning less than £100 per week. A minority of employers supplement SMP with their own maternity benefits.

Maternity Allowance may be payable to women who do not qualify for SMP, if they meet certain conditions. It is paid weekly for 26 weeks by the Inland Revenue. To apply women should complete form MA1 from the Benefits Agency or www.dwp.gov.uk/advisers/claimforms/ma1.pdf

Parental leave / paternity leave

Parental leave is available to parents of children under five at 15 December 1999. It entitles each parent to 13 weeks unpaid leave each, which may be taken during the child's first 5 years. Adoptive parents are also entitled to parental leave. Parents of disabled children may take their leave until the child is 18 years old. Parents must have been continuously employed for a year. Employers are entitled to postpone a period of parental leave for six months if they consider that the operation of their business would be unduly disrupted by it.

Fathers of babies born on or after 6 April 2003 are entitled to two weeks paid **paternity leave**. From 4 April 2004, Statutory Paternity Pay is £102.80 per week (or 90% of average weekly earnings if this is less).

Flexible working

From 6 April 2003, parents of children aged under six or of disabled children aged under 18 have the right to apply to work flexibly. Employers have a statutory duty to consider employees' applications seriously. The right is designed to meet the needs of both parents and employers, especially small employers. It does not provide an automatic right to work flexibly as there are likely to be circumstances when the employer is unable to accommodate the employee's desired work pattern. It aims to facilitate discussion and encourage both the employee and the employer to consider flexible working patterns and to find a solution that suits them both. Eligible employees will be able to request: a change to the hours they work, or a change to the times when they are required to work or to work from home.

Further information from the Department for Trade and Industry web site www.tiger.gov.uk/flexible/index.htm

⁸ Regulation 8, The Maternity and Paternity Leave etc. Regulations 1999, SI No 3312, 1999.

Resource List

Expressing and Storing Breast milk

Breast models for teaching expressing:

- Easy to make from a stocking and plastic juice bottle - DIY breast model (and baby mouth) by Jenny Richardson, BfN Tutor. See instructions in The Breastfeeding Network Newsletter, Issue 14 April 2001, pp18-19. Or contact The BfN email@breastfeedingnetwork.org.uk
- Knitting pattern for knitted breast, £1.50 incl p&p. Available through the BfN email@breastfeedingnetwork.org.uk
- Fabric breast, £38, excl p&p, from Birth International: www.birthinternational.com.
- 'Hand expression breast' – model which produces 'milk': £450 + vat. Carriage charge within the UK: £16.50 + vat. Limbs and Things, 0117 311 0500, sales@limbsandthings.com.

Articles

Fewtrell MS, Lucas P, Collier S, Singhal A, Ahluwalia JS, and Lucas A. Randomized Trial Comparing the Efficacy of a Novel Manual Breast Pump with a Standard Electric Breast Pump in Mothers Who Delivered Preterm Infants. *Pediatrics* 2001; 107(6): 1291-1297.

Hand expressing: HEBS booklet 'Breastfeeding - Off to a good start' (2003) and illustrated guide: Breastfeeding in Scotland website <http://www.show.scot.nhs.uk/breastfeed/BabyLed/index.html>

Hands A. Safe storage of expressed breast milk in the home. *MIDIRS Midwifery Digest* 2003; 13 (3). Reprinted in *the Breastfeeding Network Newsletter* 2003; 23: 12-6.

Hire of electric pumps: Ameda Egnell, Tel 01823 336362, Medela, Tel 0161 776 0400

Jones E, Dimmock PW, Spencer SA. A randomised controlled trial to compare methods of milk expression after preterm delivery. *Arch Dis Child Fetal Neonatal Ed* 2001; 85: F91-F95.

Lang S. *Breastfeeding Special Care Babies*. London, Baillière Tindall, 2nd edition 2002. £18.00.

Mail order pumps and accessories: NCT Maternity Sales, 239 Shawbridge Street, Glasgow G43 1QN. Tel 0141 637 3127, www.nctms.co.uk. Ameda Egnell and Medela (Expressions Breastfeeding), see numbers above.

Mohrbacher N, Stock J, Newton E. *The Breastfeeding Answer Book*. Illinois: La Leche League International, 3rd Edition 2003. Sections on expressing, storage of human milk, work options.

Morse JM, Bottorf JL. The emotional experience of breast expression. *Journal of Nurse-Midwifery* 1988; 33(4): 165-70.

UK Association for Milk Banking. *Guidelines for the collection, storage and handling of breast milk for a mother's own baby in hospital*. 2nd edition, 2001. Available from UKAMB, The Milk Bank, Queen Charlotte's and Chelsea Hospital, Du Cane Road, London W12 OHS, price £10 including p & p. www.ukamb.org/publications.htm

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Breastfeeding and Working

Health Education Board for Scotland (HEBS). *Breastfeeding and returning to work: a simple guide*. Workplace Health Series, 2001.

Health Education Board for Scotland (HEBS). *Breastfeeding and returning to work: Off to a good start*. 2003.

Maternity Alliance. *Breastfeeding and work. The employer's guide to law and good practice*. 1997, 2nd edition 2003. £3.50 + p&p.*

Maternity Alliance. *Having it all: a woman's guide to combining breastfeeding and work*. 3rd edition, 2002. £2.50 + p&p.*

Maternity benefits in general:

Benefits Agency : leaflets BC2: Expecting a Baby? and NI17A: A guide to Maternity Benefits.

Maternity Alliance: www.maternityalliance.org.uk. Information line tel: 020 7588 8582.

Scottish Executive / Scottish Breastfeeding Group. *Breastfeeding and returning to work*.

Edinburgh: The Stationery Office, 2000. (Out of print: available from

<http://www.show.scot.nhs.uk/breastfeed>).

World Alliance for Breastfeeding Action (WABA). In 1993, World Breastfeeding Week, organised by WABA, focussed on Breastfeeding and Working. Since then, WABA has continued to work on this issue, and produced campaign materials and resources. The website has a range of resources and links to other relevant sites world wide:

<http://www.waba.org.br/working.htm>

*Available from The Maternity Alliance, Third Floor West, 2 - 6 Northburgh Street, London EC1V 0AY. Telephone: Office: 020 7490 7639, Information Line: 020 7490 7638. Fax: 020 7014 1350. <http://www.maternityalliance.org.uk/> E-mail: info@maternityalliance.org.uk

The Maternity Alliance is an independent national charity which works to improve rights and services for all pregnant women, new mothers and their families.