

A close-up photograph of a pregnant woman's bare belly, showing the skin texture and a small mole. She is wearing a dark blue top and a red and yellow patterned skirt. The background is a body of blue water with a pebbly shore in the foreground.

Maternity and paternity guidelines

Guidance for Nautilus
International members
on UK rights as new
or expectant parents



Foreword

Welcome to the new edition of the Nautilus International guidelines to maternity and paternity rights for seafarers on UK ships.

When the Nautilus Women's Forum was established in 2010, one of the issues identified was the need for members to have clearer guidance on their rights relating to pregnancy and childbirth. Although the need for guidance originated with the forum, it is clearly an issue that affects all members, male and female, who are planning on starting or expanding their family.

Nautilus believes that, in order to grow and prosper, the UK maritime industry should be open and welcoming to male and female workers, and make allowances for people's lives to change as they get older. Seafarers should, as a matter of principle, receive the same basic levels of employment protection that their shore-side colleagues enjoy.

Women should not be expected to give up the careers they have worked hard to build, simply because they also wish to have children, and men should not be expected to miss their children growing up just because the maritime industry has too often been slow to embrace family-friendly policies.

This guidance gives a basic overview of UK maternity, paternity and parental rights and how they affect seafarers. In particular, they expand on the previous edition, and are updated in



accordance with MGN522. However, if you are not covered by UK legislation, or want to check on your specific entitlements, then please do not hesitate to contact one of our industrial organisers, who will be happy to assist you.

Mark Dickinson

General Secretary

Nautilus International

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Introduction

This guidance has been written with a focus on UK rights in respect of maternity for new and expectant mothers. It also includes some information on UK paternity and parental rights. It should also be noted that many of these rights also apply to adoptive parents (if this applies to you, please contact the Union for specific advice). As such it will mainly apply to seafarers serving on UK flagged vessels.

For those serving on non-UK vessels, there are other sources of rights which they may be in a position to benefit from, depending on their individual circumstances. Such rights may derive from the flag state, country of residence, collective bargaining agreements or company staff handbook or maternity/paternity policies.

Due to the nature of their work, often moving regularly between various countries, seafarers can face jurisdictional barriers in accessing employment related rights. However it should be noted that the UK's maternity and paternity rights derive from EU law, so any seafarer serving on an EEA registered vessel, residing in the EU or working for an EEA employer may qualify for such rights in the relevant EEA member state. For further information about your own situation, you should contact your industrial organiser in the first instance.

This guidance summarises the main provisions of the legislation and M-notices referred to, but it does not set out every aspect of them. Therefore, you should also refer to those sources for more detailed information. Also, see the section headed 'Other Information' at the back.



Health and safety



The seafarer's first port of call should be the UK marine notice MGN 522 — **Merchant Shipping and Fishing Vessels (Health and Safety at Work) Regulations 1997 and Merchant Shipping (Maritime Labour Convention) (Medical Certification) Regulations 2010; New and Expectant Mothers**. It should be noted that MGN 522 replaced MGN 460.

The Health and Safety Regulations 1997 apply to UK vessels wherever they are. Some parts of them also apply to non-UK vessels when they are in UK waters (mainly inspection and enforcement provisions when such a vessel does not conform to the standards required of UK ships under the Regulations).

Many women work while they are pregnant, and many return while they are still breastfeeding. However, the particular demands of working onboard ship can place pregnant workers at risk. Very few merchant ships carry doctors, and in the event of problems developing during pregnancy, an equivalent level of care to that available to an expectant mother working ashore is unlikely. For example, sophisticated investigations for abnormalities, which may be needed fairly urgently, could not be duplicated even on a ship with medical facilities. In addition, ship turnaround in ports is often very rapid, allowing no time for routine ante-natal care.

Seafarers must also take into account what would happen if a mother went into premature labour while onboard ship.

The Health and Safety Regulations 1997 require the employer to assess risks to all workers and to do all that is reasonably practicable to control those risks. They also specifically require the employer to take particular account of risks to expectant and new mothers in that risk assessment.

Compliance with specific regulations (e.g. handling dangerous goods) will normally be enough to reduce the risk, but consideration should always be given to removing the hazard or completely preventing exposure to the risk. Where this is not feasible, the risk should be controlled.

If there is a significant risk at work to the safety and health of a new or expectant mother, which goes beyond the level of risk to be expected outside the workplace, then the following actions must be taken to remove her from that risk:

ACTION 1: Temporary adjustment of working conditions and hours of work.

If this is not reasonable, or would not avoid the risk:

ACTION 2: Provision of suitable alternative work, if any available, at the same rate of pay.

If Action 2 is not feasible:

ACTION 3: Suspension from work on paid leave for as long as necessary to protect the employee's safety or health, or that of her unborn child.

These actions are only necessary where there is genuine concern due to the result of a risk assessment; if there is any doubt, your employer should seek professional advice on what the risks are.





Night work

Special consideration must be given to a new or expectant mother who work at night and who obtain a medical certificate stating that night work could affect her health and safety.

Step 1: If a seafarer has a medical certificate stating that night work could affect her health or safety, she has the right to be offered suitable alternative daytime work.

Step 2: If it is not possible to offer the seafarer suitable alternative daytime work, then she must be suspended from work on full pay for as long as necessary for her health and safety.



Medical standards relating to pregnancy

This section only applies to seafarers who are required to hold an ENG 1 Medical Fitness Certificate under the **Merchant Shipping (Maritime Labour Convention) (Medical Certification) Regulations 2010**.

The **ILO/IMO Guidelines on the Medical Examinations of Seafarers** advise that the normal date for the cessation of work for expectant mothers employed at sea is 24 weeks. This is because the survival of a premature infant born at 24 to 28 weeks is now common with good onshore neonatal intensive care.

Where the seafarer wishes to delay the start of her maternity leave after the 24th week, she should agree with the employer any necessary changes to her duties and her hours of work so that the following criteria are met:

The seafarer:

- ▣ is employed only on trips of not more than two hours duration
- ▣ is able to attend the appropriate ante-natal checks within working time where necessary
- ▣ has no emergency duties

The employer must undertake a risk assessment under the Health and Safety Regulations 1997. This must take account of the medical advice from the seafarer's doctor or obstetrician, as appropriate. The findings of the risk assessment must show no significant risks to the worker or her unborn child.

The employer should then make arrangements for the seafarer to see an approved doctor who will assess the position in the light of the medical evidence, the above criteria and the guidance in MGN 522.

If the approved doctor is satisfied that the seafarer is fit to continue working at sea, within the limits set out above, a new ENG 1 Medical Fitness Certificate may be issued with the following restrictions:

- ▣ restricted to trips of not more than two hours
- ▣ not fit for emergency or muster duties

If there is any doubt about the seafarer's fitness to continue to work, an ENG 3 will be issued, prohibiting the seafarer from working. The seafarer, if she wishes, may then appeal to a medical referee in the normal way.

While she continues at sea, the seafarer must continue to undergo her antenatal checks in order that her condition can be monitored. If there is any significant change in her condition, affecting her fitness to work, her employer must be notified and she should return to the approved doctor for a reappraisal.





Pregnancy and maternity — your rights

Protection from discrimination

The **Equality Act 2010** makes it unlawful for an employer to discriminate against a woman due to pregnancy or maternity. Discrimination in this context occurs when an employee is treated unfavourably due to pregnancy or paternity. For instance, it will be unlawful for an employer to discriminate against an employee because:

- ▣ of pregnancy or illness as a result of it
- ▣ she is on compulsory maternity leave
- ▣ she is exercising or seeking to exercise her right to ordinary additional maternity leave

Protection from dismissal

Under the **Employment Rights Act 1996** (ERA 1996) there are substantial protections against dismissal, and some examples are set out here. For instance, it will be automatically unfair to dismiss a woman if the reason, or principal reason, relates to any of the following:

- ▣ she is pregnant
- ▣ the fact that she has given birth to a child, where her ordinary or additional maternity leave period is ended by the dismissal
- ▣ the fact that she took or sought to take parental leave

Protection from detriment (other than dismissal)

Under the **Maternity and Paternal Leave Regulations 1999** (MPL Regulations) there are also substantial provisions which prohibit a woman from being subject to any detriment (other than dismissal), and some examples are set out here. Any act, or any deliberate failure to act, will be unlawful if it amounts to such detriment and is done for the reason that:

- ▣ she is pregnant
- ▣ she has given birth and the act or failure to act takes place during her ordinary or additional maternity leave period
- ▣ she took, or sought to take, the benefits of ordinary or additional maternity leave or paternity leave

Time off for ante-natal care

If a pregnant employee has, on the advice of a registered doctor, midwife or nurse, made an appointment for ante-natal care, she is entitled to time off with pay during her working hours to attend the appointment. For such appointments (other than the first), if the employer requests it, she must produce: (i) a certificate from one of those medical professionals stating that she is pregnant; and (ii) the relevant appointment card/document.





Maternity leave

The ERA 1996 and the MPL Regulations set out the rights to statutory maternity leave. There are three types of such leave: ordinary maternity leave; compulsory maternity leave; additional maternity leave.

Ordinary maternity leave

Any employee who is pregnant is entitled to ordinary maternity leave (OML), regardless of the period in which she has been in employment. The employee will generally have to notify her employer: that she is pregnant; the expected week of child birth (EWC); the date on which she intends her OML period to start. All of this must be notified to her employer no later than the 15th week before her EWC or, if that is not reasonably practicable, as soon as it is reasonably practicable to do so.

There are precise rules about the commencement of OML, which must be noted. OML cannot commence before the beginning of the 11th week before the EWC. OML will commence on the date chosen by the employee in her formal notification to her employer. However, there are two scenarios by virtue of which, if one occurs earlier than the employee's chosen date, OML will start automatically. The first one is if the employee is absent from work, wholly or partly because of pregnancy, after the 4th week before the EWC, OML will commence on the first day following the 4th week before the EWC. The other scenario is where, before the chosen OML date has been reached, the baby is born: in such a case OML begins the day after the birth.

The OML will generally last for 26 weeks, during which period she will be entitled to benefit from her terms and conditions of employment (such as accruing paid holiday entitlement) except for remuneration (see 'statutory maternity pay', page 14).

An employee who returns to work after OML (without taking additional maternity leave — see below) is entitled to return to the job she had before commencing OML. The MPL Regulations define the job as ‘the nature of the work which she is employed to do in accordance with her contract and the capacity and place in which she is so employed’.

Compulsory maternity leave

Any employee who is entitled to OML, in accordance with the ERA 1996, must take a period of compulsory maternity leave of two weeks, commencing with the day the baby is born. The two weeks of compulsory maternity leave falls within, and is part of, the 26 weeks of OML.

Additional maternity leave

Any employee who qualifies for OML now qualifies automatically for additional maternity leave (AML). Previously this right had been subject to a length of continuous service requirement, which no longer applies. She will be entitled to have the benefit of her terms and conditions of service during AML (and will continue to be bound by any obligations), such as accruing paid holiday entitlement, but will not be entitled to remuneration.

The AML runs for 26 weeks, commencing on the day after the last day of the OML. The employee may return to work earlier if she wishes, but she must give her employer at least eight weeks’ notice of the date on which she intends to return (otherwise her employer is entitled to postpone her return to the extent that the eight weeks’ notice period is applied, although this cannot go beyond the date on which the 26 weeks of AML is due to expire). The employee is not required to give notice if she wishes to return at the end of her 26 weeks’ AML, unless her employer specifically asks for her to give notice of her intention to return.





On return from AML, the employee's rights are not exactly the same as when returning straight from OML. After AML, the employee has the right to the same job she had before being absent or, if it is not reasonably practicable for the employer to provide that, to another job which is suitable and appropriate for her in the circumstances. The term 'job' has the same meaning as it has in cases under OML. The right is to return to terms and conditions no less favourable, e.g. same seniority and pension rights. There is no right to return to work on a part-time basis, or on preferable terms like job-share; however, an employer's refusal could amount to indirect sex discrimination, so you may, of course, make such a request.

Statutory maternity pay

Some employees (but not all) will have the right to statutory maternity pay (SMP) under the **Social Security Contributions and Benefits Act 1992** which, in conjunction with other legislation, sets out complicated rules (which cannot be detailed here) for qualifying, particularly in relation to those who do some work outside the UK.

Unlike the rights to OML and AML, SMP is subject to the employee meeting specific qualifying criteria. The main condition is that she must have been continually employed (whether required to work or not) by her employer for at least 26 weeks ending with the week immediately preceding the 14th week before the EWC.

However, not all seafarers will be entitled to SMP, even if the above condition is met. A seafarer who works on a home-trade ship with an employer who has a place of business in the UK will be entitled. If you do not meet this condition, then contact the Union for advice.

To make a claim, the seafarer must give her employer 28 days' prior notice (in writing if requested) of the date from which she expects her SMP to begin.



She must also give her employer a maternity certificate signed by a doctor or midwife, stating the expected date of her child's birth.

The SMP is payable for a period of 39 consecutive weeks. For the first six weeks, the payment will be 90% of the employee's weekly earnings. For the remaining 33 weeks, it will be the lower of the statutory level of £139.58 per week or 90% of the weekly earnings. The statutory level is amended annually and the rate referred to above has applied since 5 April 2016.

Maternity allowance

If an employee does not qualify for SMP, she may be entitled to Maternity Allowance (MA). There are two types of MA, one for 39 weeks, the other for 14 weeks (which is of a much lower level and generally for those who are not employed or self-employed) so only the former will be detailed further.

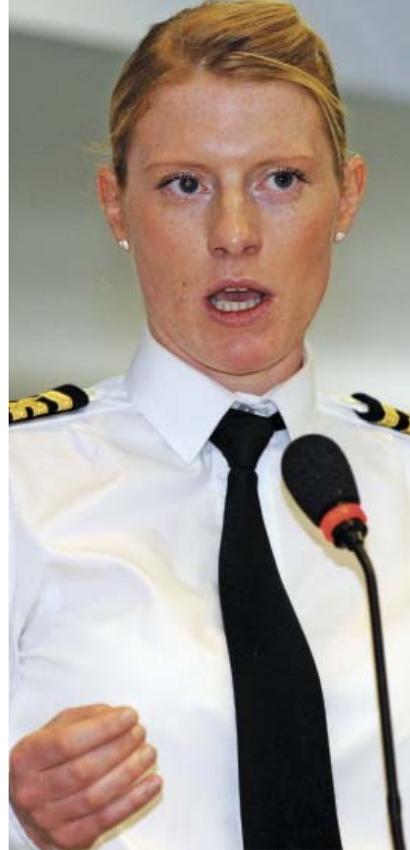
MA for 39 weeks is for those who:

- are employed, but do not qualify for SMP
- are self-employed and pay Class 2 National Insurance Contributions (including voluntary payments) for at least 13 of the 66 weeks before the baby is due — the amount of MA will depend on how much Class 2 National Insurance Contributions she has paid
- have recently stopped working

In the 66 weeks before the baby is due, the claimant must also have been: employed or self-employed for at least 26 weeks; and earning (or classed as earning) at least £30 a week over any 13-week period.

The claimant may still qualify if she has recently stopped working.

The amount of MA is £139.58 per week or 90% of average weekly earnings (whichever is less) for up to 39 weeks.





Unpaid parental leave

Any employee with one year's continuous service who has (or expects to have) responsibility for a child is entitled to take unpaid parental leave for the purpose of caring for that child. 'Responsibility' means parental responsibility or registration as the child's father. The period applicable for parental leave is a maximum of 18 weeks per child and may only be taken up until the child's 18th birthday.

The **Maternity and Parental Leave (Amendment) Regulations 2014** provide that parental leave will be governed by an employee's employment contract, so mariners should check their seafarers' employment agreement/collective bargaining agreement to see what their rights are.

If there are no such contractual arrangements, the statutory provisions prevail. The Regulations provide that leave can only be taken in blocks of one week at a time (except in a case where the child is entitled to a disability living allowance). The Regulations also provide that the maximum leave that can be taken is four weeks in respect of any individual child during any year.

Shared parental leave and pay

Shared parental leave was introduced by the **Children and Families Act 2014** and replaced 'additional paternity leave'.

The scheme allows a woman who fulfils certain conditions to bring her statutory maternity leave and pay to an end by curtailing it, and sharing the balance with her partner, spouse, civil partner or the father of her child. It may only be shared with one other person, and the amount that may be shared between the two partners is the amount foregone by the mother following her curtailment.



Equivalent rights are afforded to adoptive parents and parents who adopt through a surrogacy arrangement.

Shared parental leave is designed to give parents more flexibility in how to share the care of their child in the first year following birth or adoption. Parents will be able to share a pot of leave, and can decide to be off work at the same time and/or take it in turns to have periods of leave to look after their child.

There are a number of qualifying criteria, so seafarers should check whether they and their partner are entitled. A major point is that the mother must have been in continuous employment for 26 weeks before the 15th week before the expected week of childbirth, and have remained continuously with that employer until the week before any period to be taken as shared parental leave. Her partner must have been an employed earner for at least 26 weeks of the last 66 weeks before the expected week of childbirth (this need not be continuous). He must also have average minimum weekly earnings of the amount specified for the particular time, which is currently £30.

Paternity leave

An employee will be entitled to 'paternity' leave if he or she is the child's father or is married to or is the civil partner or partner of the child's mother. There are other qualifying conditions, but the employee must have been continuously employed for at least 26 weeks ending with the week immediately preceding the 14th week before the expected week of childbirth. It should be noted that a person will not be entitled to paternity leave if he or she has taken any shared parental leave in respect of the child. The employee may only take either one week's leave, or two consecutive weeks. During paternity leave, the employee is not entitled to be paid (although the employer can choose to offer remuneration) but retains all other contractual benefits.





Need help?

If your employer fails or refuses to grant your rights, or discriminates against you because you are pregnant or have requested a statutory entitlement, then you should promptly contact your industrial organiser at Nautilus, who will advise and assist you. You may have a right to make a claim in the employment tribunal, in which case you should note that time limits apply and must be observed. You only have three months to make such a claim, subject to any extension of this period whilst carrying out the ACAS early conciliation procedure (this must be used in all cases before a claim can proceed to the tribunal). Nautilus supports claims which have at least a 51% chance of success. Due to the relatively short time limits, if you think you have a claim, you should contact the Union immediately.

If you have any queries about your particular circumstances or you need further guidance, contact the Union and speak to an official, who will do their best to help you.

- ▣ **Email** industrial@nautilusint.org
- ▣ **Call** +44 (0)20 8989 6677 (London) +44 (0)151 639 8454 (Wallasey)
- ▣ **Visit** the website www.nautilusint.org

Other sources of information

- ▣ **ACAS** Rights and responsibilities at work www.acas.org.uk
- ▣ **BIS** Employing people/Statutory leave and time off www.gov.uk
- ▣ **Equalities and Human Rights Commission** FAQ's for employees during pregnancy/maternity leave/returning to work/legal overview www.equalityhumanrights.com
- ▣ **MCA** MGN 522 (M&F) Merchant Shipping and Fishing Vessels Regs 1997 and Merchant Shipping (MLC) (Medical Certification) Regs 2010; New and Expectant Mothers www.gov.uk
- ▣ **TUC** Work Rights www.tuc.org.uk/equality-issues





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