

Maternity Rights Matter



Usdaw

*Union of Shop, Distributive
and Allied Workers*

Executive Council Statement
to the 2013 ADM

Foreword



Maternity rights is an issue that is always high on our agenda given the make up of our membership. We represent over 237,000 women and it is vitally important we are a strong voice for their needs and concerns.

Health and safety at work is a big issue for pregnant women and new mothers in Usdaw. Many of our members do physically demanding jobs, work long and unsocial hours and are faced with demands for ever greater flexibility from their employers. This can make being pregnant at work or returning to work after maternity leave particularly challenging. Our members need the support of Usdaw. Thanks to the hard work of our reps and officers, we are able to help thousands of women and their families get the right balance between work and the demands of a new and growing family.

I want to pay tribute to and give my thanks for the work being done by our reps who play a vital role in making sure women members know their rights and have the means to enforce them. Unfortunately, pregnancy discrimination is still a significant problem for many of our women members and we have a major job of work to do to reach out to women who may not know their rights. It is vitally important that women see that Usdaw has something to offer if they are being treated unfairly at work.

One of the key roles of this Executive Council Statement is to offer practical advice to reps, particularly to newer reps, who are supporting pregnant women and new mothers at work. I hope you will welcome and make use of this statement for this reason.

This statement gives us the opportunity to look at what is happening to maternity rights and services in the UK in 2013. The picture is not good, as this statement explains. Cuts to benefits and services are hitting our members hard. Major changes to maternity and parental rights are planned for 2015 and this statement clearly explains what is going to change and why we are concerned these changes will not deliver for our members.

Defending maternity rights requires us to take action on a number of fronts:

- We need action at the workplace to help women enforce their rights.
- We are working with employers to try and improve those rights.
- We need political action, highlighting how attacks on benefits and services undermine families and the wider economy.

This statement explains what Usdaw is doing across each of these fronts to try and win a better deal for women and families.

A handwritten signature in black ink that reads "John Hannett". The signature is written in a cursive, flowing style.

John Hannett
General Secretary

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Section 1: What are the Issues for Usdaw Members?

Despite some changes in recent years, women still make up the majority of Usdaw's membership. This reflects the fact that women are concentrated in those sectors of the economy where Usdaw organises. The retail sector is not only the largest sector in the UK economy, but outside of the NHS it is also the largest employer of women in the UK. Therefore, what happens to pregnant women at work matters to Usdaw and to the employers we work with.

The good news is that the majority of Usdaw women members feel confident about telling their employers that they are pregnant and have a positive experience of pregnancy at work. This indicates that most employers are sensitively and successfully managing pregnancy at work.

Sadly we know that this is not always the case. There are many complex reasons why women might have a negative experience of pregnancy at work. For example, rights during pregnancy and maternity can be complicated. Usdaw's own research echoes the findings of much larger studies that confirm worryingly low levels of awareness of rights amongst women workers and their managers. We also know that at times of economic recession, working people can find it more difficult to assert their rights, particularly when the message from senior business leaders, the media and Government is that employment rights generally, and rights during pregnancy and maternity specifically, are a burden on business and a drain on the economy.

However, as well as the fact that some women are unaware of their rights at work or struggling to exercise them, a growing minority are reporting that being pregnant has resulted in them being treated unfairly. For example, in the last four years there has been a 30% increase in the number of pregnancy and maternity related cases going to tribunal.

By drawing on members' experience of pregnancy at work, Usdaw has identified some of the key areas where pregnant women members are likely to need support from their Union.

An Usdaw survey of women's experience of pregnancy at work found:

- Almost a quarter of women (22.8%) are not getting paid time off to attend ante-natal care.
- At least one in ten women (12.7%) are losing earnings by being asked to make up time spent attending ante-natal classes.
- Seven out of ten women (71.09%) either did not get or did not know whether they have had a risk assessment.
- 40% of women told us that their employer either did nothing or made an unhelpful suggestion when they brought to their employer's attention, the fact that they were experiencing difficulties with certain aspects of their job because of pregnancy.
- Almost two-thirds (62%) of women reported a negative change in their employer's attitude towards them during pregnancy.



Health and Safety Rights

Pregnant women and new mothers have important health and safety rights at work to protect their own health and well-being and that of their baby.

Paid time off for ante-natal care

All pregnant women have the right to take a reasonable amount of paid time off to attend ante-natal classes but despite this almost a quarter of the women that responded to Usdaw's survey said that this did not happen during their pregnancy.

"I was asked by managers to make the time back. I ended up not getting paid as I couldn't work the time back due to my young son."

A critical factor in whether or not women got paid time off appears to be the attitude or knowledge of their line manager.

"My manager at the time didn't think I was allowed. He hadn't been trained. I think he thought I was skiving instead of going to see the midwife."

"I was told that I had to make up time. When I found out that I didn't have to by phoning the Union, I went to see my personnel manager and she still tried to tell me that I had to make up the time but when I wouldn't back down she said 'Well shall I go and get myself pregnant so I can get time off work?'."

A minority of members clearly felt pressure to try to arrange their appointments for times when they weren't scheduled to work.

"I pointed out that I was entitled to be paid for them (ante-natal appointments) but there was so much hassle made I got my appointments when not at work."

"They asked me to swap my days off so I could go in my own time."



Risk assessments

Once a woman has informed her employer in writing of her pregnancy she has a right to an individual risk assessment. Usdaw's survey revealed very low levels of awareness of this right. Almost half of all women asked (46%) said that they did not know about this right and almost three-quarters either did not get one or were not sure whether one had been carried out.

This is particularly worrying as contrary to popular belief women in retail and distribution are doing difficult and demanding jobs in environments that pose particular risks, such as working with machinery, in hot and cold temperatures and in public facing jobs.

"I was lifting trays of meat, blocks of cheeses (20 kgs in a box), boxes of fish. Having to lean into deli counters. Being left to work nine hours without a break. Going home at 9.00 pm and starting work at 7.00 am the next day. I had no risk assessment. My manager never asked me how I was coping ... I had to leave nine weeks before I had planned. I collapsed at work and was admitted to hospital twice until my baby was born ... she was very small and underweight they think due to the conditions I worked under."

"They expected me to continue to lift, stretch, be constantly on my feet, work till 10.00 pm and then start again at 7.00 am the following day – right up to my 37th week of pregnancy."

"I was still lifting, bending and having to pull cages towards the end of my pregnancy. This resulted in me having to go off sick and having my baby three weeks early."



Attitudes

Suitable, alternative work

Women working in Usdaw organised industries, including retail, are working in roles that are physically demanding. Lifting, carrying, standing and sitting for long periods, twisting, bending and reaching as well as unsocial hours of work are all very common. It is not surprising therefore, that over half of the women (57%) that responded to Usdaw's survey said that these aspects of their jobs caused them difficulties at different stages of their pregnancies.

What is perhaps more surprising is the response they received when they raised these difficulties.

It is worth stressing that the majority of women received appropriate help and support from their employer to adjust their job roles and duties after pointing out that they were struggling.

However, a significant minority (40%) told us that their employer responded to their concerns by either making an unhelpful suggestion or taking no action at all.

"At six months I was quite large and couldn't really fit behind the checkouts. It hurt as I went forward and pressed on my stomach ... I felt like an inconvenience. When I asked about moving from the checkouts as it was hurting and uncomfortable I was told there were no vacancies."

"I was expected to stand up for seven hours a day in the café – washing up. Serving. If I complained the attitude was ... if you can't do the work you shouldn't be here."

"They were reluctant to let me go to the toilet – only when there was more staff to cover which meant I was going three or four hours without a toilet break ... I was lifting heavy beer boxes through the tills. I was never offered any help with this and it caused a lot of back pain."

"I had to sit at my till at all times making it very uncomfortable and I wasn't allowed to walk around. I felt like I was being punished. I was told by a manager that I was only having a baby, not dying and to get on with it."

"I was told 'if you can't do the job you should go' by a manager. I was eight months pregnant and she wanted me to fill up the fish counter."

There is a clear role here for Usdaw and others to help raise awareness amongst pregnant women workers of their rights at work during pregnancy.



Positive Action

The good news is that it is not all bad news!

The majority of women reported a good experience at work which is very encouraging.

Employers are managing pregnancy at work in a supportive way. Well over one-third of women told us that their employer became more helpful and understanding during their pregnancy.

There is clear evidence that employers are working closely with women to make sure they get it right for them, making important adjustments to women's job duties that made a big difference to their well-being.

"They were very good and understanding. They reduced my weekly hours but still paid me at my full rate. They were brilliant."

"I have been treated very fairly throughout both my pregnancies at work. Because of this I worked up until I was seven months pregnant and didn't need to take any time off work, which meant my maternity leave didn't start early."

"As far as health and safety were concerned the company and employers were excellent. I was given extra breaks during the Christmas period as it was so busy."

"My employers were very accommodating during my pregnancy. I found them to be very helpful and considerate during the hot summer months when I was heavily pregnant. I was given water when I needed it, allowed to use the bathroom at any time and if I needed to leave my checkout to walk around that was allowed. They did everything possible to make my pregnancy at work as comfortable as possible."

"My baby was stillborn at 25 weeks ... my employer has been fantastic. I have not been able to return to work because of depression and my employer has willingly kept my position open for me if I want to return. They have been understanding and supportive and have given me what I most need – time to recover."

This kind of positive action often costs very little and yet significantly improves the experience of pregnant women. It makes good business sense too and women are much more likely to be able to work late into their pregnancies and feel positive about returning to work after maternity leave. Treating pregnant women well helps an employer hold on to and get the best out of valued members of staff.

Usdaw is addressing members' concerns by:

- Raising awareness amongst reps and members of the rights at work women have during pregnancy, whilst on maternity leave and on their return to work by:
 - Publishing and regularly updating literature and posters.
 - Running high profile, national Supporting Parents and Carers Campaigns.
 - Resourcing and supporting training courses, federation schools and weekend schools on maternity and parental rights.
- Working with National Officers to ensure the issue features on Usdaw's bargaining and negotiating agendas.
- Working with employers to spread best practice.
- Making the case to Government to protect and extend rights for pregnant women workers and new parents.



Section 2: Supporting Reps

This section gives reps practical advice on how best to support pregnant women and new mothers at work.

Maternity Rights – Getting Started

Maternity rights can seem confusing and Usdaw reps, particularly newer reps, might find the following checklist helpful. Here are some practical tips for what to do when a member:

Tells you they are pregnant

Members may ask – does my manager need to know I am pregnant. A woman should tell her manager/personnel manager she is pregnant as soon as she can because this will make sure her health and safety and that of the unborn baby are protected. **In the early stages of pregnancy, a woman may not want to start telling people, but the rights women have only kick in once the employer knows a member of staff is pregnant.**

Notice does not have to be in writing at this stage.

You may want to check if the member has a copy of Usdaw's *Maternity and Parental Rights Guide*. This has all the information women need, to claim what they are entitled to. It also explains maternity leave and pay. New and expectant fathers will also find the booklet helpful.

Once the employer knows a woman is pregnant they should carry out a risk assessment. This is explained in more detail below. Reps sometimes need to remind the manager to do a risk assessment. Some companies have a generic risk assessment which they say applies to all women. However, women have individual needs whilst pregnant and these must be taken into account; it is not appropriate to take a one size fits all approach.

If a member is required to wear a company uniform, it is important to check that a maternity uniform has been ordered, if available. Women sometimes have problems as maternity uniforms are not ordered in time.

Needs time off for ante-natal appointments

An ante-natal appointment is any appointment made on the advice of a doctor, midwife or health visitor. This includes parentcraft and relaxation.

All women have a clear legal right to paid time off work to attend ante-natal appointments. This includes the time it takes to travel to an appointment and waiting. You cannot be refused time off for the first appointment, but for subsequent appointments your employer can ask for written proof of the appointment and a certificate or note from your doctor or midwife, stating that you are pregnant.

If the member does not, if asked, provide these, the employer can refuse the time off. This is the only circumstance in which employers can refuse time off. They cannot make the member make appointments in their own time, or make the time up later. If a member is happy to rearrange their shift so that the appointment falls on a day off this is their choice. It does not matter if the member does not have set hours or days they normally work, they still cannot be made to attend the appointment on a day off.

Men do not yet have the right to take time off work to go to an ante-natal appointment with their partner. From 2015 men will have the right to unpaid time off to attend two appointments.

Needs to change aspects of her job or hours of work because she is pregnant

Many women find that once they become pregnant they struggle with some aspects of their job. Some of the most common problems for Usdaw members are heavy lifting, night work, pulling cages or other heavy loads and standing or sitting for long periods of time.

Women are sometimes told that there is nothing that can be done in these circumstances. This is not correct. Managers have a legal duty to protect the health, safety and well-being of pregnant women and their unborn baby. If there are aspects of a woman's job that she is finding difficult because of her pregnancy the manager is required to do something about this.

As soon as you know a member is pregnant, it is a good idea to make sure the manager has arranged to carry out a risk assessment. This is a legal requirement. It will give the member the chance to discuss with the manager what aspects of her job she is finding difficult. The manager must then take action. The support a woman needs at work will change over time as her pregnancy develops so the risk assessment should be repeated at different stages of the woman's pregnancy. It is important to make sure members know they should let their manager know about any difficulties they are having carrying out their normal duties.

You can find out more about risk assessments in the Usdaw leaflet 342, *Pregnancy Risk Assessment – Know your rights*, which can be downloaded from the Usdaw website or ordered from your local Usdaw office.

Managers sometimes say that there is no suitable alternative work for the woman to do but in the vast majority of cases there is. It is really important the manager asks the member what they want and does not just assume what the solution might be. Women in retail are often put on checkouts in the mistaken belief that this does not involve heavy lifting. Any alternative work must be on terms and conditions that are no less favourable than the member's normal conditions of employment.

Other solutions might include working in a different part of the store, taking more regular rest breaks, being allowed to sit down, changing hours of work including transferring from days to nights or being given a buddy who can lift heavy items when asked.

Ultimately, if the manager says there is no suitable alternative work, the woman has a right to maternity suspension. This is very rare and means that the employer would have to suspend the member on full pay for as long as is necessary to avoid the risk to her health or that of her baby. However, in the majority of cases there will be a solution which keeps the member at work.



Is being disciplined for taking time off sick

A member might need time off sick for reasons related to her pregnancy. Any leave taken for pregnancy related reasons should not be included in any absence percentage calculation. It is important to check this – an employer who dismisses a woman for any absence related to her pregnancy is breaking the law.

Guidance to employers from the Government funded Equality and Human Rights Commission says:

'You should not pay a woman who is absent for a pregnancy related illness less than the contractual sick pay she would receive if she was absent for any other illness with a statement of fitness to work 'fit note'. You should record pregnancy related illness separately from other kinds of illness and should not count it towards someone's total sickness record.'

You must not take into account a period of absence due to pregnancy related illness, or maternity leave, when making a decision about a woman's employment, for example, for disciplinary purposes or if you're selecting workers for redundancy. Treat sickness absence associated with a miscarriage as pregnancy related illness.'

Problems can sometimes arise where the manager says that the reason for the absence was not pregnancy related. Advice from the NHS says that the most common kinds of pregnancy related sickness include:

- Morning sickness.
- Fatigue.
- Back ache.
- Bladder problems.
- High blood pressure.
- Sickness and nausea.
- Sleeplessness.
- Nose bleeds.
- Headaches.

This is not an exhaustive list and if in doubt you can suggest the member seeks advice from her GP.

Some conditions would not normally be pregnancy related such as a cold or the flu.



Wants to change her hours of work when she returns from maternity leave

Sometimes a member might need to change their working hours, either on a temporary or a permanent basis.

Where a member wants to come back on different hours, it is a good idea to approach their manager whilst they are still on maternity leave and not leave it until they are due to come back to work. It might take several weeks to resolve a request to work different hours.

The best approach initially is for the member to explain their circumstances to their manager and ask if the company can help.

If this informal approach does not work you can suggest the member uses the Right to Request Flexible Working procedure. Parents and carers have a legal right to ask their employer for a change in their working arrangements. The employer has to give the request serious consideration.

Any change agreed under the flexible working procedure would be a permanent change to the member's contracted hours but there is nothing to stop the member asking for a temporary change which can then be reviewed later.

The Usdaw leaflet 346, *Flexible Working – Your right to have a say in the hours you work*, tells you more about how to make a flexible working application.



Section 3: Maternity Rights Under Threat

Government, employers and trade unions have a vital role to play in protecting the rights of pregnant women and new mothers at work. Studies show that once a woman becomes pregnant the chances of her being discriminated against at work rise. Pregnant women and new mothers are more likely to lose their jobs, be selected for redundancy and be overlooked for promotion and training.

Research by the Equal Opportunities Commission found that in an average year, 8% of all pregnant women at work will lose their jobs because of discrimination. Some women are particularly at risk of unfair treatment once they become pregnant, including migrant workers.

Unfortunately the Government does not collect data on the extent of discrimination against pregnant women at work so they do not know how widespread the problem is. Usdaw has, however, taken steps to find out. We have undertaken a large scale research project involving around 1,500 women members to ask about their experiences of unfair treatment at work whilst pregnant. We know from this that discrimination on the grounds of pregnancy is a significant issue in many Usdaw workplaces.



Finding out about the extent of the problem is the least that Government should be doing. We need them to do the following:

- Make it easier for women to get access to justice when they have been discriminated against – instead they are making it harder for women to exercise their rights. From 2013 it will cost a woman £1,200 to take a pregnancy discrimination claim to employment tribunal. Without the support of a trade union few women will be able to afford to fight for justice for themselves.
- Send a clear message to employers that maternity rights are important and will be protected – instead we regularly hear business leaders complaining about maternity rights, unchallenged by Government Ministers. In fact the Prime Minister's former Director of Strategy even suggested that maternity leave be scrapped as it was stopping women from getting on in the workplace.
- Protect the services and benefits that pregnant women and new mothers rely on – since the Coalition came to power, many of the statutory payments that women and families relied upon have been axed:
 - The Health in Pregnancy Grant has been abolished. This was a £190 payment to all mothers, paid in the later stages of pregnancy.
 - The Sure Start Maternity Grant (SSMG) was restricted from 2011. This is a one-off payment of £500 for parents on lower incomes to assist with the costs of a new baby. The grant is now limited to first babies or multiple births.
 - Child Benefit was frozen from 2011 and will be restricted from 2013.

A week by week guide to maternity rights and benefits



In the early weeks of your pregnancy

Get a copy of Usdaw's *Maternity and Parental Rights Guide*.

- Get a copy of Usdaw's *Maternity and Parental Rights Guide*. It's full of useful advice about your rights at work and explains what money and leave pregnant women, new mothers and parents are entitled to. Check your contract or staff handbook to see what rights your employer offers – they may be better than the legal minimum described here.
- Health and safety risks can develop at any stage of pregnancy. Problems can arise from heavy lifting, too much driving, temperature extremes of hot or cold and awkward postures or movements. It is important that you tell your employer in writing that you are pregnant and ask them to do a risk assessment. Your employer has a legal duty to make sure that your health and that of your baby is not put at risk by the work you do. Usdaw's *Maternity and Parental Rights Pack* has more information on health and safety and a model letter for you to sign and send to your employer requesting a risk assessment.
- You are entitled to paid time off work to go to ante-natal appointments. This includes relaxation and parentcraft classes.
- All pregnant women are entitled to free prescriptions and free dental treatment throughout their pregnancy and for 12 months after their baby is born.

Week 24 of your pregnancy

- If your baby is stillborn after the 24th week of pregnancy all maternity rights apply in the same way as a live birth.
- Parents should give notice to their employer of their intention to take maternity or paternity leave, during this week.

Week 26 of your pregnancy

- Your GP or midwife will give you your MAT B1 certificate this week. You will need this to claim Statutory Maternity Pay or Maternity Allowance.
- All women are entitled to take 52 weeks' maternity leave. You must tell your employer no later than the 15th week before the week in which your baby is due: that you are pregnant; the date your baby

Week 29 of your pregnancy

- You can start your leave and pay this week provided you have given the right notice. If you do not want to start your leave this week you can start it whenever you choose from this point onwards.
- If you are unemployed your Maternity Allowance will start this week so make sure you have claimed.
- If you are getting Job Seekers Allowance, Income Support, Income Related Employment and Support Allowance, Pension Credit or Child Tax Credit of more than £545 per annum, and you have nobody in your family aged under 16, you should claim a Sure Start Maternity Grant of £500 to help with the costs of your new baby. You have to claim it within three months of the baby's birth and you can get the claim form from your local Jobcentre Plus office (see the phone book for their number). You can only get a grant for your first baby.

is due; the date you want your maternity leave to start.

- If you have worked for your employer for 26 weeks by the 15th week before your baby is due and your average earnings are at least £109 per week (before tax) you should be entitled to Statutory Maternity Pay. Statutory Maternity Pay is 90% of your average earnings for the first six weeks and then £136.78 per week (or 90% of your average weekly earnings if this is less) for 33 weeks.
- If you do not qualify for Statutory Maternity Pay you need to claim Maternity Allowance from your local Jobcentre Plus office.

Week 37 of your pregnancy

- If your partner wishes to take parental leave at the time of the birth, at the latest he/she should send his/her employer 21 days' notice.

Week 36 of your pregnancy

- It is up to you when to start your maternity leave but if you are absent from work for a pregnancy related reason in the last four weeks of your pregnancy, your employer can start your maternity leave and pay. If your baby is born early your leave and pay start from the day after your baby is born.



Usdaw

*Union of Shop, Distributive
and Allied Workers*

www.usdaw.org.uk

In the autumn of 2012 the Chancellor announced that most benefits will only rise by 1% for the next three years. This includes Statutory Maternity Pay (SMP) which has always in the past risen each April in line with inflation. From April 2013 SMP will rise by just £1.33 per week. Had SMP risen in line with inflation, it would have gone up by around £3 per week. This change will take around £180 out of the pockets of Usdaw members who qualify for SMP.

The combined effect of all of these cuts mean that women taking maternity leave now have around £1,000 less income than they had before the Coalition came to power. The amount of leave women take after the birth of a baby is heavily influenced by how much money they have coming in. Taking money away from new mothers has a direct impact on the duration of their maternity leave.

It is not just benefits that have been cut. The services on which women rely are also under threat. The Valuing Maternity Campaign, supported by Usdaw, has found clear evidence of reductions in staff on maternity wards and cuts to the number of midwives doing community visits. A recent survey of hospital units caring for premature and sick babies found that one in three had made or were planning to make cuts to their nursing workforce.

We are seeing a steady chipping away of the services, rights and benefits that pregnant women and new mothers rely on.

Defending maternity rights and services is a vitally important part of Usdaw's work. The majority of our members are women and we know from our own research that unfair treatment at work during pregnancy is still widespread. It is Usdaw members who suffer when pregnant women and new mothers are treated unfairly at work. It is women in Usdaw and their families who rely on statutory maternity pay, child benefit and tax credits and who need us to defend these benefits. And it is Usdaw members and the communities they live in who need local, high quality maternity services.

There are few issues more important than protecting maternity rights and services.



Section 4: What's Changing?

Maternity rights and parental rights are constantly evolving. In 2011 the Coalition Government consulted on proposals to revise the current system of maternity, paternity and adoption pay and leave with the aim of making it easier for working parents to share the care of their new baby in its first year in a flexible way. They also announced their intention to make changes to the right to request flexible working.

In November 2012 the Government published its response to the consultation.

Whilst Usdaw broadly welcomes the Government's response, we have serious concerns about several aspects of what is being proposed.

This section outlines what is set to change, when the changes are to come about and outlines Usdaw's concerns which we will continue to raise with Government in an attempt to make sure the new legislation reflects our members' best interests.

What's Happening to Maternity Leave and Pay?

The right to 52 weeks' maternity leave along with 39 weeks' pay will stay. However, from 2015, a woman can choose to end her maternity leave early and transfer any remaining leave to her partner. If she chooses to do this, the leave she transfers will be known as 'flexible parental leave' and not maternity leave.

So what's new? Women can already transfer their maternity leave to their partner and where they do so the leave is called 'additional paternity leave'. However, the earliest point at which leave can be transferred at the moment is week 20 after the baby's birth ensuring at least five months of leave is reserved for the exclusive use of the mother. The Government are proposing that in future (from 2015) women will be able to transfer leave after only two weeks of maternity leave. This means that from 2015 there will be a maximum of 50 weeks' 'flexible parental leave' and 37 weeks' pay.

Whilst Usdaw welcomes proposals to make leave entitlements for parents more flexible we are concerned that there may be unintended consequences for women if the period of maternity leave reserved for the sole use of women is reduced to two weeks.

Reducing the amount of leave that is specifically called 'maternity leave' to just two weeks risks undermining the long fought for principle that on the whole women and children benefit from at least six months' paid maternity leave after the birth of a baby. It sends out a strong signal that 'lengthy' periods of time off after the birth of a baby are neither necessary nor desirable. This in turn may lead to women members coming under pressure from employers to return to work before they feel ready.



Usdaw is strongly in favour of policies that encourage shared parenting. We know that many fathers and partners would like more time off at the time of their baby's birth. New mothers would also welcome this. Usdaw, however, believes that the best way to achieve the aim of shared care is to give fathers/partners and mothers separate rights.

We also know that many fathers still do not take up their full two weeks' paternity leave. This is not because they do not want to be around in those two weeks after the baby's birth. It is because the levels of flat rate paternity pay are very low. Usdaw's view is that if Government is serious about encouraging shared care then they must consider increasing the amount of maternity, paternity and adoption pay.

What's Happening to Paternity Leave and Pay?

In their response to the consultation Usdaw urged Government to extend paternity leave and pay by an additional four weeks, giving fathers and partners six rather than two weeks' leave at the time of their baby's birth. However, Government has decided not to adopt this proposal. There is to be no additional paternity leave and no additional 'dad's month' as originally proposed.

So from 2015 fathers' rights will remain as they are now – two weeks' paid leave at the time of the baby's birth provided they have 26 weeks' service before the week in which the baby is due.



What's Happening to Adoption Leave and Pay?

The good news is that from 2015 adoption rights are to be brought in line with maternity rights. This means that:

- Adoption leave will become a day one right rather than dependent upon an employee having 26 weeks' continuous service as is currently the case.
- The first six weeks of leave will be paid at 90% of average earnings rather than at the flat rate of £135.45 (£136.78 from April 2013) which is currently the case.

Unpaid Parental Leave

This will increase from 13 to 18 weeks for all parents from March 2013.

From 2015 the upper age limit for taking parental leave will be brought in line with that of parents of disabled children and rise from the age of five to the age of 18.

Ante-Natal Appointments for Fathers/Partners

From 2015 a new right for fathers and partners of pregnant women to take unpaid time off work to attend two ante-natal appointments is to be introduced.



The Right to Request Flexible Working

From 2014 the right to request flexible working will be extended to all employees who have 26 weeks' continuous service.

However, this is to be paid for by removing the regulations that underpin the right to request flexible working and replacing them with a voluntary code of practice.

Government has said that they believe the statutory procedure (or regulations) that underpin the right is 'overly burdensome and needs to be simplified'.

What Does This Mean?

At the moment where a parent or carer submits a right to request flexible working, the employer had to follow a set procedure that ties them down to:

- A strict timescale within which they must act on the request.
- A requirement to hold a meeting with the employee and a right to be accompanied at that meeting.
- A right to a written reason.
- A right of appeal.

Government have said they will replace the regulations that set out these rights with a voluntary code of practice. This means that employers will simply have to respond to requests in a 'reasonable' manner, within a 'reasonable' period of time.

Usdaw is very concerned by the loss of the regulations for the following reasons:

- If there is no timescale for responding to a request how will the employee know whether their request has been considered? Employers may not see requests for flexible working as a priority and could postpone making decisions and there will be little employees can do about this.
- If there is no requirement to hold a meeting, we might find ourselves back in the days when employers simply rule out requests without giving them serious thought. Even with the best will in the world, many managers will instinctively say no to requests due to pressure of work, concerns over staffing budgets or fears that if they agree one request they will be overwhelmed by requests from other members of staff.



The statutory regulations give all parties the opportunity to sit down and explore options within a set timescale. Usdaw strongly believes that the statutory procedure works for everyone – it works for members, employers and business, and the Union will do all it can to ensure the code of practice retains all of the above measures.



Section 5: Members who Might Need Extra Help

Migrant Workers and Maternity Rights

A growing number of our members are migrant workers and reps may find it helpful to know more about maternity rights for this group of workers.

Migrant workers from the European Economic Area (EEA) have the same employment rights as a worker from the UK.

Migrant workers have the same maternity rights as anyone else residing legally in the UK.

They have the same rights as other women to time off for ante-natal appointments, a risk assessment and the right of up to 52 weeks' maternity leave, regardless of how long they have worked for their employer.

Migrant workers are entitled to Statutory Maternity Pay (SMP) if they meet the qualifying conditions for this benefit. For more information see the section on Leave and Pay in the *Maternity and Parental Rights Guide*.

Migrant workers are entitled to access NHS maternity care. This includes ante-natal care, birth and post-natal care.

Some maternity services ask women to show their passport, however this is not universal. Even if the woman has a right to reside in the UK, she can be charged for care if she cannot show that she has lived in the UK for the past six months or else that she is 'settled' in the UK.

Access to maternity services is a vitally important issue for migrant women workers. Women from this group can experience a higher risk of death, premature labour, low birth weight and neonatal complications. Women migrant workers are more likely to be low paid and women who live in the poorest circumstances are up to seven times more likely to die than women from other groups in society.

Research in the West Midlands found that even though migrants made up just 0.3% of the overall UK population, 12% of all maternal deaths during the period under study were in refugees and asylum seekers.

Maternity Rights for Agency Workers

Agency workers have some, but not all, of the same pregnancy and maternity rights as UK employees.

The maternity rights a woman agency worker has will depend on two things:

- How long the member has worked for the agency that hired them.
- Whether or not they meet the 12-week equal treatment rule. This is explained below.

If an agency worker meets the 12-week rule then she will have exactly the same maternity rights as other pregnant women and new mothers.

The 12-week rule is designed to protect agency workers who are pregnant or who are new mothers, with the aim of keeping them in the workplace and to ensure women are not treated unfairly because of their pregnancy.

The rule means that an agency worker must have worked for 12 continuous weeks in the same role with the same hirer. The member does not have to work every day of a week for that week to count towards the 12 weeks. A week will count as a full week if the member works for at least one day.

You can find more information on how the 12-week equal treatment rule works in the section on Rights for Agency Workers in the *Maternity and Parental Rights Guide*.

Agency workers have additional rights under the Equality Act 2010. An employer including an agency cannot treat a woman unfairly on the grounds of her pregnancy or maternity. This would mean, for example, it would be discrimination if an agency refused to place a worker, or if a hirer refused to accept a worker because she was pregnant. Similarly, it would be discrimination if a placement were terminated because of pregnancy or if the worker was subject to a detriment because of her pregnancy.

If a member meets the 12-week equal treatment rule they have the right to paid time off for any ante-natal appointments that their doctor or midwife has advised them to attend. After a first appointment the member can be asked to show their appointment card proving the appointments.

If a member does not meet the 12-week rule the time off will be unpaid.

Agency workers do not have the right to maternity leave but of course this does not mean that they cannot take time off. As an agency worker, a woman is not under any duty to take work from the agency so can take as much time off as she needs.

When the member is ready to return to work, they are in the same position as before going on maternity leave. A woman cannot be refused work because they have been away on maternity leave. Any time off connected with pregnancy or childbirth will not interrupt the 12-week continuous service women need to be protected by the Agency Workers Regulations.

Agency workers can qualify for SMP provided they meet the same rules in relation to earnings and continuous service as any other worker. There is more information in the section on Leave and Pay in the *Maternity and Parental Rights Guide*.

Women with More than One Job

There is evidence to suggest that in the current economic climate, working people are finding it increasingly difficult to secure full-time employment. As a result, a growing number of people, some of whom will be Usdaw members, are making ends meet by working more than one job.

Maternity Leave

The right to 52 weeks' maternity leave is a day one right for all pregnant employees.

All the normal rules about when women can take maternity leave and when they need to give notice apply. However, women with two jobs are entitled to two lots of maternity leave and can choose to take each leave period separately if they wish.

In other words, women can choose to start and end their maternity leave with each employer at different times.

If you are self-employed in one of your jobs, you are not classed as an employee and are, therefore, not entitled to maternity leave in that job.

Statutory Maternity Pay (SMP)

All the usual rules governing entitlement to Statutory Maternity Pay apply to women who are working in more than one job.

A woman can claim SMP from more than one employer providing she satisfies the qualifying conditions in each job. She can start her maternity leave and her SMP at different times for each job.

If a woman only qualifies for SMP from one of her employers, she can continue to work for the other employer (the one who does not pay her) provided she was employed by that employer in the 15th week before the week in which her baby is due (known as the 'qualifying week').

A woman's SMP will stop if she starts work for a new employer once her baby has been born and she was not employed by the new employer in the 15th week before the week her baby is due.

Maternity Allowance

Women who have two jobs and are not earning enough to qualify for SMP in their second job will not be able to claim Maternity Allowance for their second job if they qualify for SMP in their first job. This is because a woman can only receive Maternity Allowance if she is not entitled to or receiving any SMP.

Section 6: Helping Reps Support Members

Usdaw Supporting Reps

Usdaw reps do a fantastic job supporting pregnant women and new parents at work. We know from listening to our reps, that they are dealing with a growing number of queries from members about maternity and parental rights.

It is the Union's job to make sure that our reps feel confident in their role and are able to access the information and advice they need when they need it.

Usdaw has taken action to help reps get to grips with the complex issue of maternity and parental rights so that when it comes to advising pregnant women workers and new parents, they can be sure to get it right.

Some of the options available to reps who want to find out more about this issue are outlined below:

Have you got copies of the following leaflets:

- *Pregnancy Risk Assessment – Know your rights* (Leaflet 342)
- *Same Sex Parents – Know your rights* (Leaflet 372)
- *Working Parents – Know your rights* (Leaflet 381)
- *Time off for Family Emergencies – Know your rights* (Leaflet 349)

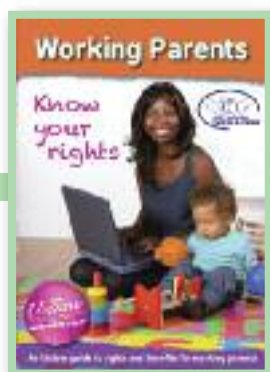
- *Flexible Working – Your right to have a say in the hours you work* (Leaflet 346)
- *Working Carers – Know your rights* (Leaflet 343)

If not order them for free by contacting the Stationery section at Usdaw's Central Office on 0161 224 2804, emailing: postroom@usdaw.org.uk or downloading them from Usdaw's website at: www.usdaw.org.uk

Have you thought about 'Maternity and Parental Rights' as a possible federation school theme?

If you would like to learn more about how to get this issue on the agenda at a federation school, make sure your branch is affiliated to the local federation. If it is, ask your representative on the federation committee to suggest maternity and parental rights as a theme for a forthcoming school.

If your branch is not affiliated to the local federation raise this with your Shop Steward/Branch Secretary/Area Organiser.



Do you know that maternity and parental rights forms part of the Usdaw course 'Workers Rights' that runs in divisions?

To find out more talk to your Area Organiser at your next rep development review.

Are you struggling to find the right advice to give to a member about their rights during pregnancy?

For more information about parental rights contact your Area Organiser.

Reps Supporting Members

We know that many women simply do not know about their rights at work during pregnancy. Usdaw reps have a key role to play letting members know that the Union understands the issues and is here to help.

However, reps are not in a position to know who is or is not expecting a baby – they have to wait until they are approached to give advice and support. By taking the simple step of displaying Usdaw's maternity rights posters and literature on the Union workplace noticeboard, reps can reach out to pregnant women members who might be confused about what rights they have and how to access them. The noticeboard can also be used to display contact details for reps in the workplace so that members know who to approach and how to contact them.

There is a poster in the centre of this statement setting out important dates during pregnancy for reps to pull out and pin up on the noticeboard.

Once you know that a member is pregnant you might want to take the following five steps to help make sure she feels supported and is able to exercise her rights at work at the right time:

1. Give her a copy of Usdaw's *Maternity and Parental Rights Guide*.
2. Ask her whether her employer has conducted a risk assessment. If she says no or does not know, advise her to complete the model letter in the *Maternity and Parental Rights Guide* and send this to her manager. This should start the ball rolling. If you do not have the model letter to hand do not worry. Advise her to tell her manager of her pregnancy and follow it up with a letter simply stating that she is pregnant and would like a risk assessment to be performed as soon as possible. From the moment a woman tells her employer of her pregnancy in writing the employer falls under a duty to look carefully at her job duties, and other aspects of her role to assess whether her job or her working environment poses any risk to her own health and safety, or that of her baby. Give her a copy of Usdaw leaflet: *Pregnancy Risk Assessments*. Remind her that as her pregnancy progresses the risks may change so that she should keep how she is coping under review and report any significant difficulties to you.



3. Remind her of her right to **paid** time off to attend ante-natal classes – it does not matter how long she has worked for her employer or who she works for – all pregnant women employees have this right. The right is slightly different for agency workers (see section 5 of this statement for more information). Explain that she does not have to make back the time or feel pressured into rearranging appointments for times when she does not normally work unless this suits her.
4. Remind her that she needs to let her employer know in writing her baby's due date and the date she wants her maternity leave and pay to start. She can do this at any time but must give notice in the 15th week before the week in which her baby is due at the very latest (week 24 of pregnancy). Advise her to send in her MAT B1 certificate to confirm her pregnancy once she has received it from her GP or midwife (normally between weeks 20 and 26).
5. Tell her about Usdaw's Maternity Grant. Under Usdaw rules women members in Scale A who have 12 months' membership at the time of the baby's birth, are eligible for a one-off payment of £30. The Maternity Grant is also available to a parent who is adopting. Members in Scale B who have 12 months' membership at the time of the baby's birth are entitled to a one-off Maternity Grant of £25. Members in Scale C are entitled to a one-off payment of £20. She must claim within 12 months of her baby's birth by sending a photocopy of her baby's birth certificate to Usdaw, Benefits Section, 188 Wilmslow Road, Manchester M14 6LJ.

Improving workers' lives – Winning for members

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