

## **Maternity rights for fixed term contract and casually employed staff**

### **What counts as a fixed term contract?**

Employees are on a fixed term contract if both of the following apply:

- They have an employment contract with the institution they work for
- Their contract ends on a particular date, or on completion of a specific task/project

Workers don't count as a fixed term employees if they:

- Have a contract with an agency rather than the institution they work for
- Are a student or trainee on a work experience placement

They may be a fixed term employee if they're:

- A seasonal or casual employee taken on for up to 6 months during a peak period
- A specialist employee for a project
- Covering maternity leave

### **Employees' rights – general**

Employers must not treat workers on fixed-term contracts less favourably than permanent employees doing the same or largely the same job, unless the employer can show that there is a good business reason to do so.

This is known as 'objective justification'.

Employers must also ensure that fixed-term employees get:

- equivalent pay and conditions, including benefits, determined either on a term by term basis or overall package

- information about permanent vacancies in the institution
- protection against redundancy or [dismissal](#)

However, they're only entitled to the same rights as permanent staff working for the same employer, and not an associated employer's institution.

Anyone who's worked continually for the same employer for 2 years or more has the same [redundancy rights](#) as a permanent employee.

### **Employees' rights in relation to pregnancy and maternity**

It is [automatically unfair](#) to dismiss a woman employee on pregnancy or maternity related grounds, regardless of her hours of work or length of service.

It is [discrimination](#) if a woman is treated unfavourably because of pregnancy, pregnancy related illness or because she is on maternity leave. This applies to all women workers including part time and fixed term workers.

An employer has to [assess the particular risks](#) to new and expectant mothers and their babies. The duty on employers covers all workers including temporary and agency workers or those employed on contracts to provide work personally.

If you are [self employed, an agency worker or doing casual work](#), you may not have the right to paid maternity/shared parental leave from your employer, but you may still get maternity pay.

If you are a researcher, your rights to maternity leave should be the same as for any other employee

### **The threat of redundancy while on maternity leave**

Women on fixed-term research contracts face a wide range of particular issues with sustaining a stable career. Due to the inequality between maternity and paternity leave entitlements, women face greater pressure to be the primary carer. If they are employed on fixed-term contracts, women are more likely to face the threat of redundancy while on leave to care for a child. Consequently, women are frequently faced with the choice of not starting a family while on fixed-term contracts or being made redundant while on leave.

The Research Councils have recognised this problem and have sought to mitigate it to some extent. Research Councils UK provisions allow for the extension of grants or the provision of additional funds in the case of researchers going on maternity leave. This means that grants can be extended to enable researchers to return and finish the project or to fund a substitute:

- *"The duration of the grant may be extended, by an overall total of up to 12 months to allow work to be completed where it has been unavoidably delayed by periods of maternity, paternity, shared parental or adoption leave, or by changes from full-time to part-time working."*

Most institutions do not provide this but simply say that they will continue to pay university or occupational maternity pay until the end of the contracted employment with Statutory Maternity Pay covering the rest of the period of any maternity.

Should an institution decide not to renew a fixed term contract, providing there is a genuine redundancy (i.e. pregnancy and/or maternity are not the reasons for the redundancy) and correct redundancy procedures have been followed and redeployment considered, this is likely to constitute a fair dismissal. If the reason for the dismissal is related to pregnancy/maternity, then it will automatically be unfair.

### **Suitable alternative employment**

If you go on maternity leave during a fixed-term contract and as a consequence are put at risk of redundancy, you have a right to be offered a suitable alternative. This is much stronger than an institution's policy obligation to try to find you an alternative. The employee who is at risk *must be offered any suitable vacancy, regardless of whether they are the best candidate.*

That means that institutions should have a policy in place that means that 'suitability' can be assessed and established fairly, that suitable vacancies can be proactively identified, and that ensures that employers offer any employment found to be suitable without any competitive process. A suitable vacancy means that terms and conditions must not be "substantially less favourable" than those applying to the employee's old job.

UCU has recently negotiated a helpful policy with the Open University which sets out a clear and transparent procedure for ensuring that the institution is fulfilling its statutory obligations to match staff who are on maternity, adoption, additional paternity or shared parental leave to suitable alternative employment and ensure that they are offered these jobs.

<http://www.open.ac.uk/foi/main/sites/www.open.ac.uk.foi.main/files/files/ecms/human-resources/f/fixed-term-contracts/Line-Managers-Guide-redundancy-redeployment-FTC-while-on-maternity-additional-paternity-adoption-leave-HRG331.pdf>

### **If you have two employers**

If you have two or more part time roles, you are allowed to claim maternity and leave from all employers on a pro rata basis, subject to qualifying conditions.

### **Paid time off for ante natal care**

An employee has the right to reasonable time off for ante natal appointments and travel to GP or clinic without loss of pay. Agency workers who have completed 12 weeks in the same place have the right too.

## Negotiating a policy

Branches should seek to negotiate a policy that establishes:

- That any scheme for the use of bridging funds at the end of contracts includes funding the extension of contracts while on maternity, adoption, additional paternity or shared parental leave up to the level of the Research Councils allowance.
- That all research staff on fixed-term contracts are placed on a redeployment register at an early point and assisted in maintaining an up-to-date 'research-skills-record' in line with the model redeployment agreement.
- That when a vacancy becomes available, those at risk of redundancy while on maternity leave, additional paternity leave or adoption leave are placed at the front of the matching process for suitable alternative employment.
- That suitable alternative employment will be established when a person at risk meets the essential elements of the person specification or can be trained to meet the essential elements of the person specification within a maximum of 3 months. Managers should be given clear guidance that they must decide whether the individual has the suitable skills, abilities and qualifications to meet the essential criteria and not, whether the at-risk individual is the best person for the role.
- That staff on maternity leave, additional paternity leave or adoption leave who are matched to a suitable vacancy will be offered the job without further competition
- That any meetings arranged between staff matched as suitable and managers are explicitly not interviews and are organised with reasonable account taken of leave requirements.
- That if the decision is taken that an individual is not suitable, the specific reasons for this decision are recorded.
- That staff who are offered employment as a consequence of this matching process are given full information about the role and enabled to make an informed decision on whether to accept it.
- The terms and conditions of the role offered need to be no less favourable than that from which the employee is being made redundant.

## Checklist for negotiating on maternity leave for research staff

	Yes	No	Partial	Comment (notes on areas for further negotiation)
All research staff at risk of redundancy placed on a redeployment register at an early point and assisted in maintaining an up-to-date 'research-skills-record'? (in line with overall model policy above)				
Agreement that those at risk of redundancy while on maternity leave, additional paternity leave or adoption leave are placed at the front of the matching process for suitable alternative employment?				
Suitable alternative employment established by matching against essential elements of person specification or identifying potential to be matched within 3 months?				
Agreement that suitable candidates will be offered vacancy without interview?				
Clear and transparent process for recording any decision not to offer vacancies, and reasons for this decision?				
Policy applicable to all staff on fixed-term contracts?				
Has the Regional Official been informed or consulted over details/advice?				
Equality impact assessment carried out?				
Is there a review procedure? How will the agreed text be preserved? <i>Note: electronic storage requires pdf format to avoid the possibility of editing without agreement</i>				
Is there a monitoring process for the use of the procedure?				
Will UCU locally monitor the use of this procedure?				

	Yes	No	Partial	Comment (notes on areas for further negotiation)
What training will be provided and to who, in the use of and application of the procedure?				
How will UCU inform local branch officers of the procedure and its application?				
Can UCU use this procedure in local organising and recruitment initiatives?				

### Further information

GOV. UK (a United Kingdom public sector information website, created by the Government Digital Service to provide a single point of access to HM Government services)

[www.gov.uk](http://www.gov.uk)

Maternity Action

[www.maternityaction.org.uk](http://www.maternityaction.org.uk)

TUC – leave and pay for mothers – Know your Rights booklet

<https://www.tuc.org.uk/leaveandpayformothers>

UCU – find your local branch and/or regional office

<http://www.ucu.org.uk/yourcontacts>