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GPC

General Practitioners
Committee

BMA 

Maternity, paternity, parental and adoptive leave for GP registrars

Introduction

The information in this guidance is applicable to all four countries in the UK unless otherwise specified.

GP registrars work as employees of the training practice. This means that rights to maternity and parental leave are granted by the practice, rather than the NHS, as would be the case for hospital trainees. During the hospital part of training GP Registrars will be eligible for the General Whitley Council (GWC) provisions as detailed in the GWC Handbook. Historically, agreement was reached between the BMA and the Health Departments for the rights of GP Registrars to mirror those of Whitley, for example in relation to maternity leave and pay.

1. Maternity Leave Entitlement

From 6 April 2003 new statutory provisions were introduced which increased the period of maternity leave and maternity pay from 18 to 26 weeks.

The Whitley Agreement

In October, Section 6 of the GWC Handbook was amended to take the new statutory provisions into consideration. This applies to those doctors whose expected week of child birth is on or after 1 October 2003. For those doctors who qualify for Whitley the revised entitlements are:

26 weeks paid maternity leave, broken down into:

8 weeks on full pay (less Statutory Maternity Pay (SMP) or the Maternity Allowance (MA) if receivable)

14 weeks half pay (plus SMP or the MA if receivable providing the total does not exceed full pay)

4 weeks at the standard SMP/MA rate.

Between 6 April 2003 and 1 October 2003 doctors received the old entitlement of 18 weeks maternity leave and pay (8 weeks full pay and 10 weeks half pay) plus an additional 8 weeks at the standard SMP/MA rate.

GP Registrar Entitlement under the Directions

The maternity provisions for GP registrars in England during the general practice part of their training are set out in the *Directions to Strategic Health Authorities (Directions to Local Health Boards in Wales) concerning GP registrars 2003* (formerly paragraph 38 of the Statement of Fees and Allowances - the "Red Book"). This is not a legal statement of registrars' rights as such but a set of guidelines for payment of a registrar's salary to the practice. These set the conditions under which Strategic Health Authorities may pay the employing practice the salary of a registrar on maternity leave (as well as other allowances).

The Directions to Strategic Health Authorities concerning GP registrars 2003 can be found at:

<http://www.dh.gov.uk/assetRoot/04/06/85/12/04068512.pdf>

The Directions to Local Health Boards concerning GP registrars 2003 (Wales) can be found at:

<http://www.wales.nhs.uk/documents/gp-registrars-2003-e.pdf>

Unfortunately, when the Directions were recently revised no amendments were made to the maternity section to bring it into line with either the new statutory provisions or Whitley. The Directions currently allow for:

18 weeks paid maternity leave, broken down into:

8 weeks on full pay (less SMP/MA if receivable)

10 weeks half pay (plus SMP/MA if receivable providing the total does not exceed full pay)

These provisions are the same as Section 6 of the Whitley agreement prior to it being revised in October 2003. As the statutory provisions are the minimum that an employee is entitled to this needs to be supplemented by a further 8 weeks to bring it up to 26 weeks.

Those GP Registrars who have a clause in their contract of employment that refers to Whitley will automatically be subject to the new Whitley agreement under Section 6.

We would advise those who do not have such a clause to try and negotiate with their training practice and for the PCT (or national equivalent) to apply Whitley on the basis of the historical arrangements and the fact that the Directions mirror the old Whitley entitlement.

In the event that the training practice and/or the PCT (or national equivalent) are not willing to recognise this and insist on following the Directions as they are currently worded, we would advise that they must add an additional 8 weeks of maternity leave to the 18 weeks currently indicated, to bring them into line with the statutory provisions.

Qualifying Conditions under the Directions

The Directions state that to qualify for maternity leave, the Registrar must have “*at least 12 months continuous service which may be with one or more employing authorities or local authorities or as a GP registrar in general practice by the beginning of the 15th week before the expected week of confinement*”. This should be interpreted as meaning that Registrar posts can be counted as continuous with hospital service in making up the required 12 months.

The following (taken from paragraph 43 of the Directions) will not be deemed to be a break in service and may for this purpose be disregarded:

- (a) a break in service of 3 calendar months or less between termination of employment with one Strategic Health Authority and resumption with another or as a GP Registrar
- (b) less than 6 calendar months (up to 12 months in Scotland) spent as a locum for, or assistant to, a general medical practitioner
- (c) a period of up to 6 months (up to 12 months in Scotland) spent abroad as part of an approved vocational training programme on the advice of a postgraduate dean or College or Faculty Adviser in the specialty concerned.

There have been cases of alternative interpretations of continuous service which require registrars to work a full 12 months in the training practice before accruing their entitlement. This is clearly incorrect, as it would make it impossible to take paid maternity leave until the registrar year was over.

The GP Registrar must notify her trainer (by providing a statement from a practitioner or certified midwife indicating the expected date of confinement) of her intention to take maternity leave and whether she intends to resume her traineeship with the same or another GP trainer after her confinement. This must be done as soon as possible and no later than 21 days before commencement of the maternity leave period, or if this is not possible, as soon as is reasonably practicable. The GP registrar should inform her trainer of the date she proposes to return, in writing, at least 21 days before that date.

The Directions also give information on what happens if a doctor becomes sick when they are pregnant. Where a GP registrar has chosen to work beyond the 6th week before the expected week of confinement, certified sickness absence after the 15th week which is unrelated to pregnancy will be treated as sick leave until the date previously agreed that maternity leave would commence. If the illness is attributable to the pregnancy then maternity leave commences from the 4th day of such absence.

In addition, the GP registrar should continue to be employed by the GP trainer until immediately before the beginning of the 15th week before the expected date of confinement, in order to qualify for maternity leave.

If the GP registrar works in the actual week of confinement and is therefore entitled to payment in respect of the work done, maternity leave should start on the first day of absence.

Scotland

The 15-week rule does not apply in Scotland. In Scotland, the GP registrar should continue to be employed by the GP trainer until immediately before the beginning of the 11th week before the expected week of confinement, in order to qualify for maternity leave.

The Scottish Statement of Fees and Allowances, under paragraphs 38.26 (a) and (b) (Qualifying Conditions in Respect of GP Registrar Maternity Leave) specifies the beginning of the 11th week before the expected week of confinement.

For more information, consult:

- The Scottish Statement of Fees and Allowances on the Scotland's Health on the Web (SHOW) website: <http://www.show.scot.nhs.uk/sfa/>
- SEHD circular PCS (GC) 2003/1 "Maternity, Paternity, Adoption and Related Leave" [http://www.show.scot.nhs.uk/sehd.pcs/PCS2003\(GC\)01.pdf](http://www.show.scot.nhs.uk/sehd.pcs/PCS2003(GC)01.pdf)

In Scotland, the Scottish Executive Health Department is currently working on Scottish GP Registrar Directions. These may not be in place for April 2004. Scottish GPC is seeking for interim arrangements to be put in place.

Statutory Maternity Pay (SMP)

Continuous service for statutory purposes will mean service with the practice and not with the NHS as a whole. Therefore the statutory provisions would apply to any GP registrar who did not qualify for the provisions within the Directions but who had enough service with their practice. As employees of the practice they will be entitled to the same statutory provisions as other employees as a minimum. This also applies to adoption and paternity leave.

Where there is no right under Whitley or the Directions due to lack of continuous service GP registrars may be entitled to SMP or the Maternity Allowance dependent upon their length of continuous service with the current employer. New statutory provisions came into force on 6 April 2003 and increased the provisions from 18 to 26 weeks paid maternity leave.

Because it is often difficult for doctors in training to accrue this statutory right and because the arrangements are complicated, registrars considering maternity leave should contact their local BMA office for more detailed advice on the relevant provisions.

On-going GPC negotiations - we continue to push for the Directions to be amended and brought into line with the new GWC provisions. This would then give GP Registrars parity with their hospital colleagues.

For more information, consult the DTI website: <http://www.dti.gov.uk/er/maternity.htm>

2. Paternity Leave

The Whitley Agreement

For those doctors who are employed under the Whitley Council conditions they will be covered by Section 7 of the GWC Handbook, which entitles them to **2 weeks' paid paternity leave per birth where they have 12 months' service within the NHS.**

Those GP registrars with less than 12 months' service will be entitled to unpaid leave subject to local agreement.

Statutory Paternity Pay (SPP)

New statutory provisions were introduced on 6 April 2003 and employees who fulfil the qualifying criteria will be entitled to **2 weeks' paid paternity leave.**

The NHS is not an employer for statutory purposes but those GP registrars who have achieved adequate service of 26 weeks ending with the 15th week before the expected week of child birth who are not entitled to Whitley will be able to attain the statutory entitlement.

GP Registrar Entitlement under the Directions

Under the Directions there is currently no separate provisions for paternity leave for GP registrars so they will be subject to the statutory provisions. However, where there is not enough service to qualify for the statutory provisions, GP registrars will be subject to the policy that exists within the practice. Where one does not exist, it will be down to local negotiation.

On-going GPC negotiations - we acknowledge that the above paternity provisions should be incorporated within the Directions and ideally mirror the GWC ones so GP registrars can receive their normal pay. We are currently seeking for them to be brought into line with the statutory provisions.

For more information, consult the DTI website: <http://www.dti.gov.uk/er/individual/patrights-pl517.htm>

3. Parental Leave

The Whitley Agreement

The provisions for those covered by the Whitley agreement are contained in Section 7 and apply to those doctors with 12 months' service in the NHS as a whole.

Statutory Parental Leave

Those GP registrars not covered by Whitley will be entitled to the statutory provisions where they have a year's service with the training practice. Reference to parental leave should be incorporated into the contract of employment.

In addition to the rights to maternity and paternity leave and pay there is also a **statutory** right to parental leave. This entitlement allows an individual the right **to at least thirteen weeks (unpaid) leave in respect of each child born or adopted after 15th December 1999 (18 weeks if a child is disabled)**. Parental leave can be taken in periods of not less than a week and must be taken before the child's fifth birthday (or fifth anniversary of their adoption). The qualifying criterion for this statutory entitlement is 12 months' continuous service.

GP Registrar Entitlement under the Directions

Under the Directions there is currently no separate provisions for parental leave for GP registrars so they will be subject to the statutory provisions. However, where there is not enough service to qualify for the statutory provisions, GP registrars will be subject to the policy that exists within the practice. Where one does not exist, it will be down to local negotiation.

On-going GPC negotiations – we are seeking amendments to the Directions so they are brought into line with the statutory provisions.

For more information, consult the DTI website: http://www.dti.gov.uk/er/parental_leave.htm

4. Adoptive Leave

The Whitley Agreement

Section 7 of the GWC provisions deals with adoptive leave and pay for those doctors employed under national terms and conditions of service. GP registrars in their hospital posts also need to refer to this section.

Statutory Adoptive Leave

Adoptive leave is now a statutory entitlement (for employees with adequate service) and also an entitlement under the GWC provisions. This means that those doctors rotating from hospital posts may expect this. The new statutory

provisions which came into force in April 2003 mean that GP registrars with the qualifying service of 26 weeks' continuous service, ending with the week in which they were notified of having been matched with the child, are entitled to **26 weeks' paid adoptive leave**.

GP Registrar Entitlement under the Directions

There are currently no separate provisions for GP registrars for adoptive leave under the Directions.

Therefore the minimum entitlement a GP registrar would get is the statutory entitlement mentioned above (if they have adequate service).

On-going GPC negotiations - we are seeking amendments to the Directions so they are brought into line with the statutory and GWC provisions.

For more information, consult the DTI website: <http://www.dti.gov.uk/er/adoption.htm>

5. Time Off for Dependants

This is a right which allows employees to take a reasonable amount of time off work to deal with certain unexpected or sudden emergencies and to make any necessary longer term arrangements. The emergency must involve a dependant (husband, wife or partner, child or parent) of the employee.

Statutory Provisions

The statutory provisions do not specify the amount of time off which is reasonable that an employee should take. It is envisaged that one or two days should be sufficient to deal with the problem. The employee is not entitled to take two weeks' leave to look after a sick child. In the event of a dispute, it will be up to an employment tribunal to determine what is reasonable.

GP Registrar Entitlement under the Directions

There are no separate provisions for time off for dependants under the Directions. Therefore GP registrars will be subject to the statutory provisions and any policies that exist within their practices. However, we would **expect practices to act reasonably when considering requests for time off for dependants but ultimately it will be at their discretion.**

For more information, consult the DTI website: http://www.dti.gov.uk/er/time_off_deps.htm

Some Frequently Asked Questions

I'm currently in my hospital post of my VTS and will be transferring to a stand-alone GP registrar post. Will my maternity payments continue?

Yes, as long as you have 12 months' continuous service.

I'm about to go on maternity leave and have just finished my GP registrar training. What will happen with my maternity payments?

We will be trying to clarify with the Department of Health what happens when a GP registrar has finished their training. We would like to seek a provision that stipulates that there is no requirement for a GP registrar to return to their training post or another post in order not to lose maternity pay. At the moment PCTs or national equivalents deal with this in different ways and it will be dependent on local negotiation.

The Directions require the GP registrar to return to a traineeship after maternity leave to qualify. Therefore GP registrars are advised that where possible to plan their leave so that they have not completed their training at the time leave commences and there is a requirement to return. The position is different in hospital posts where trainees just

need to return to the NHS.

When should I tell my employer I'm pregnant?

This will depend at which stage the GP registrar is at within her training. If a GP registrar is asking about a future employer, the GP registrar needs to make sure there is a clear contractual commitment i.e. documented offer and acceptance of employment.

If asking whilst in employment, the statutory minimum notice requirements are no later than the end of the fifteenth week before the expected week of childbirth. However, GP registrars should be aware of the benefits of notifying the employer as early as possible e.g. health & safety considerations, risk assessments, time off for antenatal appointments etc.

I am in the middle of my GP registrar year and am currently on maternity leave. I was previously working full time but due to personal reasons would like to return to work on a part-time basis. Would this be possible and will it affect my maternity leave pay?

Yes you should be able to return to work on a part-time basis although there is no absolute right for any employee to reduce their hours. We suggest that you discuss returning part-time with your practice at the earliest opportunity. You can also discuss your return with your local Deanery, Local Medical Committee or Workforce Development Confederation, all of whom should look favourably on your case. We feel it would be very difficult (but not impossible) for a training practice to refuse returning part-time, particularly as GP registrars are considered supernumerary. However, if your application should be refused then justifiable reasons must be given.

If an application is refused you can appeal in writing and an appeal meeting will be arranged at which the employee can be accompanied. If the application is still refused there are several options open to you. You could lodge a grievance under the practice grievance procedure, suggest mediation or arbitration with an external third party, such as ACAS or apply to an employment tribunal depending on the circumstances of the refusal. Doctors are advised to seek advice from their local BMA office.

You will need to note that part-time is usually at 60% of full-time although a recent change in European law allows 50% training to be accepted by the JCPTGP. However, you would be advised to have this confirmed in writing by the JCPTGP before 50% training is embarked upon. You would not need to pay back any maternity pay unless you did not return at all. You will need to be aware that your salary will be adjusted accordingly on a pro-rata basis.

I'm currently pregnant and am a part-time GP registrar. Will working part-time affect my maternity leave and pay entitlements?

Part-time GP registrars are treated the same as full-timers and you will be entitled to the same rights depending on your particular circumstances as to whether you are covered by the statutory or GWC provisions or the Directions to Strategic Health Authorities (or equivalent).