



## Support Staff Maternity Policy

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Chair of the Trust

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## 1. Rationale

Looking forward to and looking after a new baby is a busy and exciting time. This policy explains what maternity leave you are entitled to as a member of staff, excluding teachers, and what you need to do to notify the school about when you will be taking leave and if and when you will be returning to work.

The area of maternity rights and benefits is a fairly complex one; this policy aims to guide you through it.

Nothing in this guidance shall be construed as providing less favourable than statutory rights.

## 2. 'The Week Baby Due'

The policy uses the language 'the week baby due.' This week always starts with a Sunday. For example, if the baby was expected on Tuesday 4th May, then the week baby due would be the week Sunday 2nd May to Saturday 8th May. This is the same language used by HM Revenue and Customs.

## 3. The Maternity Certificate (MAT B1 Form)

The MAT B1 Form is the Maternity Certificate that is signed by a doctor or midwife and usually given to the pregnant woman after her 24th week of pregnancy.

## 4. Definitions of Continuous Service

People who work at a school in Endeavour Schools Trust may have several definitions of continuous service. Firstly, there is the service at one of the Trusts schools, secondly there may be elements of continuous service that were carried across from the schools prior to when they became academies, when staff worked for Worcestershire County Council. Thirdly, there may be some staff who have other service that is counted on joining the Trust schools. Staff will need to check their contract to see the date given for continuous service relating to maternity.

## 5. Employment Protection

Dismissing a woman because of her pregnancy is automatically unfair and against the law, as is any other unjustifiably different treatment at work in connection with her pregnancy or maternity leave.

## 6. Notification Obligations – Employees

An employee should contact her line manager when her pregnancy is confirmed for health and safety reasons, and to ensure that all of the necessary steps to claim maternity leave and pay are taken. The employee can decide when she actually wants her maternity leave to start later (see below).

At least 28 calendar days' before she wants her maternity leave to begin, she must give her line manager written notice of:

- The week baby due, and;
- The date that she intends her maternity leave to start (she can change this but needs to give 28 days' notice, unless this is not reasonably practicable). If she could also give an indication of her future plans at this point, though there is no obligation to do so and any notification will not be held as contractual or set in stone by the Trust.

The employee must provide her completed MAT B1 form as soon as is reasonably practicable after she receives it to the school secretary and this will be sent to payroll to ensure that maternity pay is received in a timely fashion.

A letter will be sent to the employee confirming the stated expected date of return from maternity leave and the details of the pay she is likely to receive.

## 7. Starting a New Job during Maternity Leave

If, after the baby is born, an employee works for another employer who did not employ them in the 15th week before the week baby due, she must inform her line manager, who will inform payroll. If the employee is receiving Contractual Maternity Pay or SMP payments at this point, these will stop.

## 8. Health and Safety at Work/Risk Assessment

There is legislation to ensure that the working environment does not put employees at risk when they are pregnant, or if they have given birth in the last 6 months or are breast feeding. The employee must advise her manager (preferably in writing) when she becomes pregnant so that any necessary measures can be taken to protect her and/or her baby (employees should be aware that managers are not required to take any specific action until written notification has been provided).

The line manager must ensure that risk assessments are carried out as necessary and that the employees is included in the process. If a risk assessment identifies any unacceptable risks to the employee or her baby, then appropriate action must be taken. These assessments should be carried out as required and specifically as soon as possible:

- After the employee informs her manager of the pregnancy
- If the employee returns to work less than 6 months after giving birth
- If the employee is breast-feeding
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If a risk assessment identifies any unacceptable risks to the employee or her baby, then appropriate action will be taken.

Wherever possible the job should be adapted so that risks are avoided, but where this is not possible the risks must be reduced by other means. Risk reduction methods should include combating the risks at source, adapting the work to the individual (work equipment, work methods etc) or introducing new technology.

In some cases, alternative work may be offered. In certain jobs, where it is not possible to eliminate risks or to provide suitable alternative work. Suspension on full pay on the grounds of health and safety may be necessary.

The manager should conduct follow up meetings as necessary to review the employee's circumstances, revisit the risk assessment and ensure that any necessary actions or adjustments are progressed.

The HSE (Health & Safety Executive) produce "A Guide for new and Expectant Mothers who Work" (Reference IHDG373) which provides further useful information.

### Infectious Diseases in the Workplace

If a colleague or child contracts an infectious disease, as standard practice they should be sent home until the infection has cleared up. As there is a higher risk to new or expectant mothers and the child (born or unborn), they should be protected from infection as far as possible. It would not usually be necessary for the expectant mother to be sent home if the colleague or child has been sent home. However, it is recommended that she should contact her doctor or midwife to discuss the risk of infection.

## 9. Start Date of Maternity Leave and Pay

Maternity leave can start at any time from the 11th week before the week baby due up to the birth.

Maternity pay will start on the same day as maternity leave (except in the circumstances as outlined below).

If an employee is absent from work on account of a pregnancy-related illness or for safety reasons connected with her pregnancy during the 4 weeks before the week baby due, her maternity leave is assumed to have begun from her first day of absence. This would be at the start of the 4th week before the week baby due if the pregnancy-related absence started before this.

**Note** - If an employee is absent from work on account of an illness that is not pregnancy-related, then the usual sickness absence provisions apply. The start of her maternity leave would **not** be triggered automatically by this absence.

The start of maternity leave will also be triggered automatically if an employee gives birth before the date she intended to start her maternity leave (see section 10).

## 10. Premature Births

If an employee gives birth before the date that she intended to start her maternity leave, she will still be eligible for maternity leave and pay as if the baby were born as expected, provided that the necessary medical evidence is produced (see below) This must show that she would have been eligible for this type of maternity leave and pay if it were not for the early birth.

Within 28 days of the birth, the employee must provide medical evidence of the date that the baby was due **and** the actual date of birth. If it is not possible for her to give this evidence within 28 days, for example due to her medical condition, she must do so as soon as possible. This medical evidence is usually the MAT B1 form. A birth certificate is acceptable as evidence of the actual date of birth.

Maternity leave is deemed to have started on the day after the actual date of birth and maternity pay will also commence on the day after the birth.

## 11. Stillbirth or Miscarriage

If the baby is stillborn after the 24th week of pregnancy, the employee will still be eligible for maternity leave and pay. If it had not already started, maternity leave and pay commences on the day after the actual date of birth, whether or not this is a Sunday.

To receive SMP, the employee must provide medical evidence of the date that the baby was due and the date of stillbirth within 28 days. If it is not possible for the employee to provide this evidence within 28 days, for example due to her medical condition, then she must do so as soon as this is possible.

For stillbirths or miscarriages before the 24th week of pregnancy, it is likely that sick leave or special leave will be appropriate.

## 12. Maternity Leave Entitlement

All women are entitled to both 26 weeks' **ordinary maternity leave** and 26 weeks **additional maternity leave** (AML must immediately follow OML), giving a total basic entitlement of 52 weeks.

### 13. Time off for Antenatal Care and Other Appointments

Pregnant employees are entitled to paid time off work to keep appointments made on the advice of a registered health visitor, doctor or midwife before their baby is born. These are not restricted to medical examinations and may include other appointments, such as relaxation and parent craft classes on the advice of a registered health visitor, doctor or midwife. Except for the first appointment, employees should show the employer an appointment card or other documents showing that an appointment has been made. Employees should give their line manager reasonable notice of appointments.

### 14. Entitlement to Return to Work

Employees are entitled to return to work after maternity leave to the same job that they left. They are also entitled to any increases in pay or improvements in terms and conditions that occurred in their absence.

The only exceptions to the right to return to the same job are where a redundancy situation has arisen or where exceptional circumstances that would have occurred regardless of whether an employee had taken maternity leave necessitate a change in the job (e.g. a general reorganisation). In either of these cases, the employee is entitled to be offered a suitable alternative vacancy, where one is available. This new post must be suitable to her and her terms and conditions of employment must not be less favourable to her than if she had been able to return to the post in which she was originally employed. This means that such an employee will be treated more favourably than any other redundant employees.

If the role of an employee who is on maternity leave becomes redundant and a suitable alternative vacancy is not available, then Contractual Maternity Pay ceases on the date that the employment ends. This does not affect any other maternity pay that the employee is eligible for (i.e. SMP or Maternity Allowance).

### 15. Fixed Term Contract and Temporary Employees

A fixed term contract or temporary contract must not be ended or not renewed because of an employee's pregnancy or maternity leave.

If the contract necessarily ends for a reason not connected with the pregnancy or maternity leave, for example where a child the person was supporting has left, a project complete or funding is no longer available, then the normal procedure for ending such a contract should be followed. However, managers may need to extend the consultation process to account for the impact of the timing of the maternity leave and the birth. As soon as possible after the manager becomes aware of the pregnancy, they should ensure that the employee is aware of the possible implications of reaching the end date of their current contract, and in what circumstances the contract might end or be extended.

An employee who is eligible for SMP would still be entitled to receive it if her contract of employment ended between the date on which she qualifies for statutory maternity pay (the 15th week before the week that the baby is due) and the date on which it becomes payable. See section 18 for more information.

### 16. Returning to Work

Under Health and Safety legislation, an employee must remain absent for at least two weeks after the birth of her baby.

Unless the employee states otherwise, it must be assumed that she will be returning to work at the end of additional maternity leave.

If an employee wants to return to work before the end of her maternity leave, she must give her line manager at least 21 days' written notice before the day on which she wishes to return.

Where an employee changes her mind about the date she intends to return and has already notified an early return date, she must again provide written notice. If she wants to return even earlier she will have to give notice 21 days before the new date. If she wants to postpone her early return she will have to give notice 21 days before the original early return date.

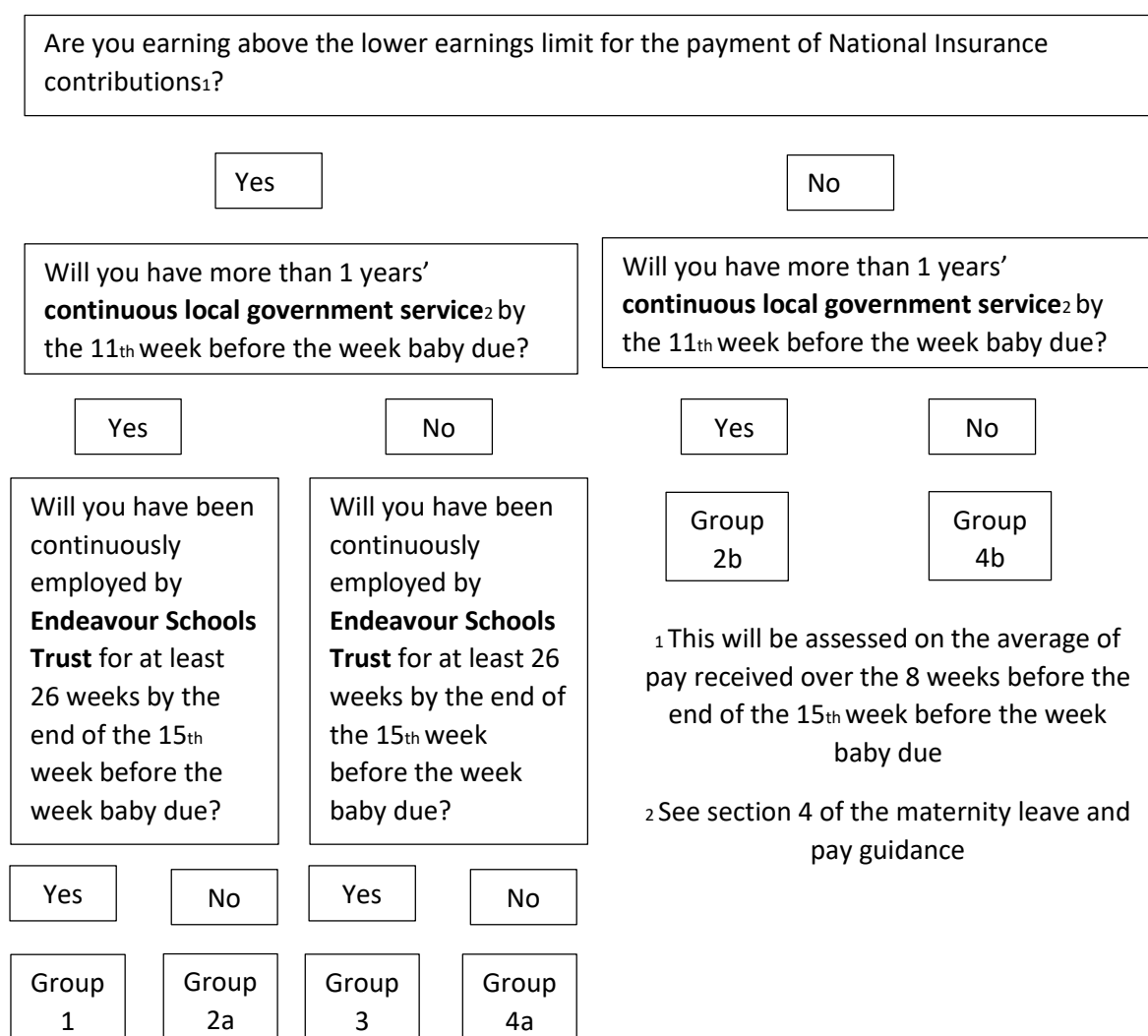
### 17. Maternity Pay

There are two different types of pay that employees may be entitled to whilst on maternity leave. These are Statutory Maternity Pay (SMP) and Contractual Maternity Pay. These are both paid in the same way as the employee's salary or wages.

Employees who are not eligible for SMP may instead be entitled to Maternity Allowance, which is paid to them directly by their Social Security or Jobcentre Plus office.

The type of maternity pay to which an employee is entitled depends on a number of different factors. The flow chart below can be used to identify which type of maternity pay an employee is **likely** to be entitled to. More detail about the eligibility requirements and the actual pay for each Group is given in sections 18 to 21.

## Flow Chart: How much maternity pay am I likely to be entitled to?



**Group 1** - You are eligible for Contractual Maternity Pay and likely to also be eligible for SMP.

**Group 2a or 2b** - You are eligible for Contractual Maternity Pay and should also apply for Maternity Allowance. If you qualify through Group 2b, then your Contractual Maternity Pay is likely to have no value unless you are refused Maternity Allowance. This is because Contractual Maternity Pay plus Maternity Allowance cannot exceed your normal earnings.

**Group 3** - You are likely to be eligible for SMP. You are not eligible for Contractual Maternity Pay.

**Group 4a or 4b** - You are not eligible for Contractual Maternity Pay

### 18. Group 1 – Contractual Maternity Pay and Statutory Maternity Pay

To qualify for both Contractual Maternity, Pay and SMP, an employee must:

- have been continuously employed by **Endeavour Schools Trust** for at least 26 weeks by the end of the 15<sup>th</sup> week before the week baby due;
- have at least 1 year's **continuous local government service** by the 11<sup>th</sup> week before the week baby due;



- be earning above the Lower Earnings Limit for National Insurance (assessed on the average of pay received over the 8 weeks before the end of the 15th week before the week baby due);
- meet all of her notification obligations.

Contractual Maternity Pay and SMP is paid in the following stages:

#### Weeks 1 – 6

**Either** 90% of the employee's average weekly earnings in the 8 weeks before the end of the 15th week before the week baby due **or** 90% of the employee's weekly salary based on her annual salary. The employee is entitled to whichever is greater.

#### Weeks 7 – 18

If the employee declares in writing that she will return to Endeavour Schools Trust for at least 3 months, she will receive the flat rate of SMP (or 90% of her weekly earnings if this is less) plus half pay - provided that this does not in total exceed her normal earnings.

Employees not planning to return to Endeavour Schools Trust employment for at least 3 months will be paid the flat rate of SMP (or 90% of the employee's weekly earnings if this is less) only for weeks 7 - 18.

Employees who decide not to return to Endeavour Schools Trust employment and who have already received the half pay element of their entitlement for weeks 7 to 18 will normally be required to repay it. They would **not** have to pay back the SMP element of their pay.

If an employee is unsure whether or not she wishes to return to Endeavour Schools Trust employment, the half pay element of her entitlement for weeks 7 to 18 may be paid over a different mutually agreed distribution. This could be as a lump sum when she returns to work.

#### Weeks 19 – 39

The flat rate of SMP (or 90% of the employee's weekly pay if this is less).

#### Weeks 40 – 52

This part of the leave is unpaid.

### 19. Group 2a or b – Contractual Maternity Pay only (these employees may also be entitled to Maternity Allowance)

To qualify for Contractual Maternity, Pay only, an employee will either:

- a) have at least 1 year's continuous service by the 11th week before the week baby due but less than 26 weeks' continuous service by the 15<sup>th</sup> week before the baby is due **OR**
- b) have 1 year's continuous service by the 11<sup>th</sup> week before the baby is due, but earn below the lower earnings limit for the payment of National Insurance contributions.

**In practice, employees who qualify for Contractual Maternity Pay through Group 2b are unlikely to actually receive any payment from Endeavour Schools Trust unless they are refused Maternity Allowance** (see below). This is because any Maternity Allowance payments received must be deducted from their Contractual Maternity Pay for weeks 1-6, and Maternity Allowance Plus Contractual Maternity Pay cannot exceed the employee's average weekly earnings for the rest of her maternity leave.

Employees who are paid Contractual Maternity Pay only may additionally be entitled to Maternity Allowance, which is paid to them directly by their Social Security or Jobcentre Plus office.

Employees will be given form SMP1, which they should take to their Social Security Office along with their MAT B1 form to apply for Maternity Allowance. Employees who have two or more employers will need to get form SMP1 from each of their employers to claim Maternity Allowance.

Contractual Maternity Pay is paid in two stages:

#### **Weeks 1 – 6**

90% of the employee's weekly salary based on her annual salary. The value of any Maternity Allowance payments that the employee receives during these weeks must be deducted from this.

#### **Weeks 7 – 18**

If the employee declares in writing that she will return to Endeavour Schools Trust employment for at least 3 months, she will receive half pay. The value of any Maternity Allowance payments that she receives is **not** deducted. However, the combined payment of Maternity Allowance and Contractual Maternity Pay cannot exceed her average weekly earnings.

If the employee is not intending to return to Endeavour Schools Trust employment for at least 3 months, no Contractual Maternity Pay will be due for weeks 7 – 18.

Employees who decide not to return to Endeavour Schools Trust employment and who have already received the Contractual Maternity Pay entitlement for weeks 7 – 18 will normally be required to repay it. They would not have to pay back their Maternity Allowance.

If an employee is unsure whether or not she wishes to return to Endeavour Schools Trust employment, the half pay element of her entitlement for weeks 7 to 18 may be paid over a different mutually agreed distribution. This could be as a lump sum when she returns to work.

#### **Weeks 19 – 52**

Employees will not receive any payments from during this part of the leave. However, they may still be eligible for Maternity Allowance payments for up to 39 weeks.

### **20. Group 3 – Statutory Maternity Pay (SMP) Only**

21.1 To qualify for SMP, an employee must:

- have been continuously employed by **Endeavour Schools Trust** for at least 26 weeks by the end of the 15th week before the week baby due;
- be earning above the Lower Earnings Limit for National Insurance (assessed on the average of pay received over the 8 weeks before the end of the 15th week before the week baby due);
- meet all of her notification obligations.

SMP is paid in the following stages:

#### **Weeks 1 – 6**

90% of the employee's average weekly earnings in the 8 weeks before the end of the 15th week before the week baby due.

#### **Weeks 7 – 39**

The flat rate of SMP (or 90% of the employee's weekly pay if this is less).

#### **Weeks 40 – 52**

This part of the leave is unpaid.

### 21. Group 4a or 4b – Maternity Allowance only

Employees who do not meet the conditions to receive SMP will be given form SMP1, which they should take to their Social Security or Jobcentre Plus office with their MAT B1 form to apply for Maternity Allowance. Employees who have two or more employers will need to get form SMP1 from each of their employers to claim Maternity Allowance.

### 22. Pay Awards

Pay awards which take effect after the 15th week before the week baby due or during maternity leave will be taken into account in assessing eligibility for SMP and for calculating payments. If a pay award is back-dated, payments will be recalculated and SMP eligibility will be reassessed in cases where the employee was initially ineligible because her level of pay was too low.

### 23. Deductions including Pension Contributions

Income Tax and National Insurance is deductible from Contractual Maternity Pay and Statutory Maternity Pay (SMP).

For employees who are members of the Local Government Pension Scheme and receive Contractual Maternity Pay and/or SMP for up to 39 weeks, this period counts as full pensionable service and superannuation deductions will be made from maternity pay.

Employees can also choose to pay superannuation contributions for any unpaid maternity leave during the additional maternity leave period. They are given the option to pay these contributions on their return to work. If these additional payments are not paid, the value of their pension will be reduced. The Pensions Section can provide further information about this and can be contacted by telephone: (01905) 765765 or email: [pensions@worcestershire.gov.uk](mailto:pensions@worcestershire.gov.uk)

Other deductions, such as trade union subscriptions will only continue as long as employees are being paid enough to cover them.

Some trade unions' rules may not require members to pay subscriptions during maternity leave. Where this is the case, the member should ask her trade union to suspend her subscription. If payments fall behind because there is no pay to cover deductions, the trade union may assume that the member has resigned, resulting in the loss of membership benefits.

### 24. Contractual Benefits

Employment is considered to be continuous throughout the whole period of maternity leave.

Employees are entitled to the benefit of their normal terms and conditions of employment throughout the 26-week **ordinary** maternity leave period, except those parts relating to pay.

During **additional maternity leave**, the employment contract continues and the employee will receive all those contractual benefits that she received during the ordinary maternity leave period, again excluding those parts relating to pay.

### 25. Annual Leave

The entitlement to paid annual leave is not affected by maternity leave, and employees continue to accrue annual leave during their absence from work.

Public holidays constitute part of an employee's contractual leave entitlement. Where a public holiday will fall during an employee's period of maternity leave, an additional day's leave should be credited to the employee's annual leave entitlement for that leave year. For part-time employees,

this would be the number of hours that they would usually work on that day, if it were not a public holiday. For example, if an employee usually worked 4 hours on a Friday and Good Friday occurred during their maternity leave, then she should be credited with 4 hours' annual leave. Bank Holiday entitlement is pro-rated for part-time employees.

Employees **must** plan how to use their annual leave entitlement with their manager before they start maternity leave. An employee can

- take annual leave before her maternity starts
- take paid annual leave instead of unpaid maternity leave (**Note** – this would have to follow the end of her maternity leave).

#### 26. Sickness during Maternity Leave

Employees are not entitled to either contractual or statutory sick pay while they are on maternity leave.

#### 27. Non Return to Work/Resignation

If an employee is unable to return to work at the end of her maternity leave due to ill health, this further leave would be treated as sickness absence and the normal arrangements would apply.

If an employee decides that she does not wish to return to work, she must give the notice required in her contract of employment.

If an employee who is eligible for Statutory Maternity Pay leaves before her maternity leave starts, then Endeavour Schools Trust is still responsible for making SMP payments to the employee. Her SMP will be payable from the day following the date on which employment ended. These payments are then reclaimed from HM Revenue and Customs. Contractual Maternity Pay ceases on the date that the employment ends.

If an employee who is eligible for Contractual Maternity Pay (Group 1, 2a or 2b) decided not to return to work and gives notice so that her employment will end before the end of the 6<sup>th</sup> week of her maternity leave, advice should be sought from the Chief Financial Officer. In certain circumstances, the employee may be worse off financially if her resignation takes effect before the end of the 6<sup>th</sup> week of her maternity leave because Contractual Maternity Pay ceases on the date that the employment ends.

#### 28. Keeping in Touch Days

Employees are able to work for up to 10 "Keeping in Touch" (KIT) days during maternity leave without losing their Statutory Maternity Pay (SMP) for that week. The intention of these days is to enable employees to keep in touch with what is happening in the workplace.

The days are voluntary and can be suggested by either the manager or employee. The type of work undertaken is a matter between the manager and the employee. However, both parties must be in agreement about attendance and the details of the work to be undertaken, before any work commences.

The 10 days are calculated on the basis of two normal working weeks for the employee (as at the day before commencing the maternity leave); therefore, one day is equal to one fifth of the employees' normal working week.

Employees will be paid for the hours worked if they do not work their normal daily number of hours. KIT days will not be pro-rated where an employee is unable to work their normal working hours on a day. Regardless of the number of hours worked on one occasion it will count as a full KIT day. To arrange payment for hours worked on a KIT day, manager should inform the Chief Financial Officer.

Employees will be paid at their normal hourly rate and should they undertake a KIT day during their SMP period, pay will be offset against SMP.

Employees should attend work during normal hours and will not be paid for travelling time to/from work and/lunch breaks.

Attendance at work is to undertake normal work activities and therefore employees will need to ensure that they make alternative care arrangement for their child/ren. Social occasions will not count at KIT days.

If an employee is unable to attend a planned KIT day due to ill health, the employee is not entitled to either contractual or statutory sick pay and an alternative KIT day should be arranged.

### 29. Endeavour Schools Trust Equipment

It will normally be expected that before going on maternity leave, staff will return all Endeavour Schools Trust equipment (such as laptops and ipads) in order to be utilised by the individual covering the period of maternity leave.

### 30. Breastfeeding

If any employee wishes to continue breastfeeding on her return to work, she should inform her manager before she returns to work. The manager should then carry out a risk assessment with the employee.

The workplace regulations require employers to provide suitable rest facilities for workers who are pregnant or breastfeeding. The facilities should be suitably located (eg near to toilets) and where necessary should provide appropriate facilities for the new or expectant mother to lie down.

Wherever possible, a private, healthy and safe environment should be provided for nursing mothers to express and store milk. Toilets are not suitable for this purpose.

### 31 Employees who have more than one Job

An employee who has more than one contract of employment can treat each of her posts separately for her maternity leave. This means that she can choose when to start and end her maternity leave separately for each post however if an employee has more than one job with Endeavour Schools Trust, if all of their earnings have to be added together to work out class 1 national insurance contributions, they also have to be added together to work out her average weekly earnings, so she is entitled to receive only one lot of SMP. This is usually the case, and indeed is a general rule, where the employee has two or more jobs with the same employer or with associated employers.

Therefore, the employee must commence maternity leave for all jobs on the same day before they could start to receive their SMP (subject to KIT days)

An employee has the right to decide whether or not she want to return to work for each post separately. She does not have to return to all posts. However, if she returns to fewer posts than she held with Endeavour Schools Trust when she started her maternity leave and received the half pay element of contractual maternity pay, she would have to repay the amount of this that applied to the post(s) that she did not return to.