

April 2009

Maternity rights and benefits: undocumented migrants

This is one of a series of information sheets which provide a guide to maternity rights and benefits for pregnant women and new parents according to their immigration status. This information sheet covers:

- Employment-related maternity rights
- Benefits and
- Healthcare

Other information sheets cover rights and benefits for asylum seekers, refused (failed) asylum seekers, refugees, EU/EEA nationals (including A8 and A2), women with no recourse to public funds, and UK citizens and permanent residents.

Immigration status

Undocumented migrants are people who have entered the UK legally but have lost their right of residence and are still in this country, or people who entered the UK illegally and do not have the right of residence. Undocumented migrants include students and tourists who have overstayed their visa, trafficked women, women who entered on a spouse visa and whose partner has not regularised their status, and many others.

Many undocumented migrants work in the UK, pay taxes and have a National Insurance (NI) number (see below) but are some of the most vulnerable and exploited workers with few rights.

Employment rights

It is against the law for employers to employ undocumented migrants. Employers are now obliged to carry out checks to determine an employee's right to work. A new civil penalty scheme was introduced in February 2008 for employers found to have employed workers illegally.

From November 2008 a new points-based system is being introduced for employing migrant workers from outside the EEA. Under the new system, migrants will need to pass a points-based assessment before they are given permission to enter or remain in the UK. Anyone working under current immigration rules will have to apply under the new system to extend their work permit.

Undocumented migrants who are working for employers who are unaware of their immigration status may benefit from the following rights during pregnancy and maternity leave. Employers who are knowingly breaking the law are unlikely to provide these rights to illegal workers as undocumented migrants who are refused these rights will not be able to enforce them in an employment tribunal.

Pregnant employees have the right to paid time off for antenatal care, protection from health and safety risks and the right not to be treated unfairly because of pregnancy or childbirth. Employees have the right to 52 weeks maternity leave from day one of their employment.

Statutory Maternity Pay (SMP) is paid by the employer for 39 weeks to women who meet the qualifying conditions. The woman will need to provide a MATB1 maternity certificate from her GP or midwife in order to claim SMP from her employer. A woman who does not qualify for SMP can claim Maternity Allowance (MA) but a claim is likely to alert the authorities to her presence in the UK.

Casual or agency workers have the right to health and safety protection and the right not to be treated unfairly because of pregnancy or childbirth. They also have the right to SMP or MA if they meet the qualifying conditions.

Fathers or partners (including same sex couples) who work are entitled to two weeks paternity leave and may qualify for two weeks' Statutory Paternity Pay (SPP) or income support.

Work-related benefits such as SMP, MA, SPP and Statutory Sick Pay are not affected by a person's immigration status and are not classed as public funds but, again, receipt of these benefits may alert the authorities to a person's presence in the UK.

Benefits

Undocumented migrants are not entitled to claim benefits or tax credits. Making a claim for benefit could alert the immigration authorities to the fact that a person is here unlawfully as there are close links between the benefit authorities and the Border Agency.



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How to obtain an NI number

In order to work and claim most benefits, a person must provide an NI number for themselves and anyone else they are claiming for, apart from a child.

It is not necessary to have the right to reside in the UK to obtain an NI but a person who does not have the right to reside will be excluded from qualifying for most benefits. Couples with different immigration status will both need an NI number or benefit may be refused.

An application for an NI number can be made at a local social security office and must be accompanied by sufficient documentary evidence of identity such as a passport, identity card, birth/marriage certificate or other Home Office or Border Agency documents. It could also include a letter from a solicitor, doctor or advice worker, or a statement from someone who knows the applicant. A person can also be interviewed to establish whether an NI number can be issued. If an NI number is refused or benefit is refused because one of a couple does not have an NI number, they should seek legal advice.

Healthcare

Maternity care

Undocumented migrants are entitled to access NHS maternity care but may be asked to pay for care. NHS guidance states that maternity care is 'immediately necessary' care and must not be withheld because the woman is unable to pay in advance. Maternity care includes antenatal care, birth and postnatal care and includes HIV treatment during pregnancy. This is not widely understood and the woman may need to insist that the maternity service follows the NHS guidelines.

When attending for maternity care (or for other forms of healthcare), a woman may be asked whether she has a legal right to be in the country and how long she has lived in the UK. 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.

Secondary care

Secondary care includes care provided in hospitals and by specialists. Undocumented migrants may be asked to pay for secondary care. Care which is considered to be 'immediately necessary' treatment or 'urgent' treatment must be provided without delay whether or not the woman is able to pay. Care which is considered 'non-urgent' can be refused if the woman is unable to pay in advance. Only clinicians can decide on the urgency of treatment.

GP and other primary care

Department of Health guidance states that GPs have the discretion to register undocumented migrants, but are not required to do so.

Exceptions

Undocumented migrants are entitled to free NHS care for: compulsory mental health treatment, testing (but not treatment) for HIV/AIDS, treatment for communicable disease including TB and sexually transmitted infections (except for HIV/AIDS), emergency care provided in Accident and Emergency.

Useful contacts

Acas

www.acas.org.uk

Information on rights at work - 08457 474747

UK Border Agency

For up-to-date information on the new work permits system see

www.bia.homeoffice.gov.uk

Immigration enquiry bureau - 0870 606 7766

Citizen's Advice Bureau

www.adviceguide.org.uk

General help and advice. You can find your nearest CAB in the phone book.

Community Legal Advice

www.communitylegaladvice.org.uk

Immigration advice and access to a legal adviser in your area 0845 345 4345

Project London

www.medicinsdumonde.org.uk/projectlondon

Free and confidential help to access healthcare – 020 8123 6614, 020 7613 4106 Monday/Wednesday/Friday 1.00-6.00pm

Working Families

www.workingfamilies.org.uk

Advice on maternity rights and benefits. Helpline 0800 013 0313.

Maternity Action and Medact are unable to provide advice on individual cases.

This information sheet was produced in April 2009. It is important to get up-to-date advice.

For email updates on this information sheet, send a message to maternityrights-subscribe@yahoogroups.com