

Pregnancy and Maternity Related Discrimination

This employment law briefing highlights the key points a business should be aware of to help avoid any pregnancy and maternity related discrimination claims.

It sets out the rights of, and responsibilities to, employees and job applicants. However, it is important to bear in mind that many of these rights and responsibilities apply equally to other workers a business may also have in the workplace, including:

- Agency staff.
- Self-employed consultants

Rights available to pregnant employees

- **Unfavourable treatment.** A business must not treat an employee or job applicant unfavourably because of:
 - her pregnancy; or
 - an illness she has suffered as a result of her pregnancy.

This protection lasts from when her pregnancy begins until the end of her maternity leave or, if earlier, when she returns to work

- **Time off.** Employees are entitled to reasonable paid time off for ante-natal appointments during working hours. The business is entitled to ask for evidence of an appointment, other than for the first one (for example, the appointment card).
- **Health and safety protection.** A specific risk assessment should be carried out for all pregnant employees, whatever their job description.

Rights available to new mothers

- **52 weeks' maternity leave.** To qualify for leave, an employee must tell the business, at least 15 weeks before the week her baby is due, that:
 - she is pregnant;
 - the week her baby is due; and
 - the date she wants to start her maternity leave. Generally, she cannot start this earlier than 11 weeks before her baby is due.
- **Unfavourable treatment.** The business must not treat an employee unfavourably because she is on maternity leave (for example, by failing to consider her adequately for a promotion while she is on maternity leave).
- **Statutory maternity pay for up to 39 weeks.** To qualify, an expectant mother must have 26 weeks continuous service with the business at 15 weeks before the week her baby is due.

- **Keeping in touch (KIT) days.** During maternity leave a new mother can work for up to ten days for the business without losing her entitlement to maternity pay or bringing her maternity leave to an end. This can include training or any other activity connected with “keeping in touch” with the workplace. The business is not obliged to offer KIT days and an employee is not required to accept any that are offered to her.
- **Redundancy*.** If an employee on maternity leave is potentially redundant, that employee has the right to be offered any suitable vacancy **before** it is offered to any other potentially redundant employee.
- **Flexible working.** A new mother has the right to request and for the business to consider flexible working conditions (for example, a change to the hours they work).
- **Health and safety protection.** A specific risk assessment should be carried out for all new mothers, whatever their job description.
- **Return to old job.** A new mother has the right to return to her old job, or a similar job with equivalent status, once her maternity leave has ended (unless there is a redundancy situation).

*Upcoming changes in law

The Pregnancy and Maternity (Redundancy Protection) Bill is making its way through parliament. The bill would mean that a woman could not be made redundant from the start of pregnancy until 6 months after returning to work (unless the employer is closing the business or ceasing to work in that area). It goes one step further as women who experience a miscarriage would also be protected for 6 months after their pregnancy ends.

Victimisation

A business is prohibited from victimising a job applicant, employee or previous employee because they have made or intend to make a pregnancy or maternity leave related discrimination complaint.

Exceptions

Pregnancy and maternity discrimination may be permitted in certain limited circumstances. For example, the business may be allowed to treat women differently to comply with legislation (such as health and safety legislation) designed to protect pregnant employees and new mothers.

Vicarious liability

- If one employee discriminates against another employee, the business may be liable unless it has taken reasonable steps to prevent the conduct taking place (for example, by having a policy or procedure in place that covers the particular conduct). The offending employee may also be liable.
- The business could also be liable for the harassment of an employee by a third party (for example, customers or visitors) in some circumstances.

Penalties

- If a job applicant or employee succeeds in a claim for pregnancy or maternity discrimination, an employment tribunal will generally award compensation (including a sum for injury to feelings). There is **no limit** on the amount of compensation that can be awarded. Litigation can involve significant management time and costs, which are usually not recoverable.
- A claim against the business is likely to create negative publicity. It is better to avoid getting involved in a claim, than attempting to manage a crisis after a claim has been made. The whole process is also likely to damage the morale of other employees.

This employment law briefing just provides an overview of the law in this area.

For a complete understanding of how it may affect your particular circumstances, please contact our Employment Team for a free consultation.

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